

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

LAURA DZIADEK,

Plaintiff,

vs.

THE CHARTER OAK FIRE INSURANCE
COMPANY, d/b/a TRAVELERS,

Defendant.

4:11-CV-04134-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 now give you some additional instructions. The instructions I am about to give you now are in writing and will be available to you in the jury room.

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.

All instructions, whenever given and whether in writing or not, must be followed.

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, 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.

FINAL INSTRUCTION NO. 4

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. 5

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. 6

You have heard testimony from persons described as expert. A person who, by knowledge, skill, training, education, or experience, has become an expert in some field may state opinions on matters in that field and may also state the reasons for those opinions.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

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 of the other facts and circumstances in evidence in deciding the weight to give the testimony of that witness.

FINAL INSTRUCTION NO. 8

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

FINAL INSTRUCTION NO. 9

A corporation can only act through its officers, employees, and agents. 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 for which he or she was then acting.

FINAL INSTRUCTION NO. 10

Some witnesses have mentioned a “mediation” occurring in January of 2012. You are instructed to disregard any testimony about a “mediation” and should not speculate about what the “mediation” was or what occurred at any such “mediation.”

FINAL INSTRUCTION NO. 11

I gave you an instruction during trial about statutes of limitations in South Dakota for tort claims and contract claims so that you could understand some of the testimony. There are no statute of limitations issues for you to decide; the statutes of limitations do not bar any of the claims here.

FINAL INSTRUCTION NO. 12

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

“Preponderance of the evidence” means the greater weight of the evidence or the greater convincing force of the evidence. Preponderance of the evidence 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.

As the plaintiff in this case, Dziadek has the burden of proving each of her claims by a preponderance of the evidence.

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. 13

In this action, Dziadek has the burden of proving by a preponderance of the evidence the following issues:

- (1) That Charter Oak breached the contract of insurance at issue.
- (2) If you find for Dziadek on the contract claim, when Charter Oak would have paid certain insurance benefits, if Charter Oak had not breached the contract.
- (3) That Charter Oak committed the intentional tort of bad faith in either handling Dziadek's claim or denying that claim or both.
- (4) That Charter Oak committed fraud and/or deceit in its dealings with Dziadek.
- (5) If you find for Dziadek on either or both intentional tort claims, the amount of damages, if any, sustained by Dziadek as a legal result of any bad faith, fraud, or deceit by Charter Oak.

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

FINAL INSTRUCTION NO. 14

Dziadek claims that Charter Oak breached the insurance contract by not paying Dziadek the underinsured motorist coverage (UIM) and automobile medical payments coverage (AMP or “med pay”) benefits until February 21, 2012. To prevail on her breach of contract claim, Dziadek must prove each of the following elements by a preponderance of the evidence:

One, that Charter Oak’s policy at issue contained an enforceable promise to Dziadek; that is, that Dziadek was an insured under the policy for UIM and/or AMP coverage;

Two, that Charter Oak breached that promise in this case by preventing Dziadek from formalizing a UIM claim and/or AMP claim; and

Three, that Charter Oak’s breach legally caused Dziadek damage.

If you find that each of these three elements has been proved by a preponderance of the evidence, your verdict on the breach of contract claim must be for Dziadek. If, on the other hand, any of these elements has not been proved by a preponderance of the evidence, then your verdict must be for Charter Oak. You should consider the claims concerning UIM benefits and AMP benefits separately. However, the elements to show a breach of contract are the same and thus are combined in this instruction.

FINAL INSTRUCTION NO. 15

Dziadek had to satisfy certain conditions precedent under the Charter Oak policy to be entitled to UIM and AMP benefits. I have instructed you previously on preconditions to formalizing a UIM claim. This instruction is similar, but a bit more detailed. If you find the difference between this instruction and any earlier instruction to be significant to this case, you are to follow this instruction. To be entitled to UIM benefits under the policy, Dziadek needed to

1) reach a resolution—whether by a judgment against, a tender of liability limits from, or a settlement—with any underinsured motorist and/or any insurance carrier for such underinsured motorist (in Dziadek’s case Peterson, Progressive, and, if it were liable, Billion Empire Motors, Inc.);

2) notify Charter Oak of any such resolution and the potential release of any tortfeasor (which would include not only Peterson and Progressive but also any other person or entity whose negligence caused the motor vehicle accident), so that Charter Oak could choose to exercise its Schmidt/Clothier rights;

3) demonstrate damages to Charter Oak in excess of the underlying liability limits of any underinsured motorist (in Dziadek’s case, damages above the Progressive limits for Peterson of \$100,000) and up to the UIM limits; and

4) otherwise cooperate with Charter Oak.

To be entitled to AMP benefits under the policy, Dziadek had to

1) show Charter Oak that the accident caused her to incur medical expenses and that those expenses were reasonable and necessary;

2) demonstrate the amount of those medical expenses up to the \$5,000 limit.

Dziadek contends that Charter Oak breached the policy by preventing her from fulfilling these conditions precedent at an earlier date. Because Charter Oak’s obligation under the contract was subject to conditions precedent, Charter Oak had a duty to refrain from preventing or materially hindering the occurrence of the conditions precedent. A party commits a breach of contract if it prevents or hinders the fulfillment of a condition precedent and the prevention or hindrance contributes materially to the non-occurrence of the condition. If it can be shown that the condition precedent would not have occurred regardless of the prevention or hindrance, the prevention or hindrance did not contribute materially to the non-occurrence of the condition and there has been no breach of contract.

Charter Oak denies having prevented or hindered Dziadek from satisfying the conditions precedent. It also argues that its conduct did not contribute materially to Dziadek’s failure to satisfy the conditions precedent in the policy.

Dziadek has the burden of proving by a preponderance of the evidence that Charter Oak prevented or hindered her from performance of the conditions precedent and that the prevention or hindrance contributed materially to the non-occurrence of the conditions precedent.

FINAL INSTRUCTION NO. 15A

These instructions and evidence in the case referred to the Schmidt/Clothier procedure. The Schmidt/Clothier procedure derives its name from a Minnesota Supreme Court decision which sought to balance the rights and interests of an insurance carrier and an insured seeking UIM benefits from the insurance carrier. Because of its subrogation rights against tortfeasors who caused a motor vehicle accident, an insurance carrier is entitled to receive notice from the insured of any proposed settlement or resolution that may compromise subrogation rights. With respect to a resolution with the underinsured motorist, the insured (here Dziadek) must give notice to the UIM insurance carrier (here Charter Oak) of a proposed resolution with the underinsured motorist and her liability insurance carrier (here Peterson and Progressive). The UIM insurance carrier (here Charter Oak) then has the choice to consent to the resolution or to substitute its own check thereby paying the insured (here Dziadek) the underlying liability limits. If the UIM insurance carrier substitutes its check, then the UIM insurance carrier preserves subrogation rights against the underinsured motorist and her liability carrier.

FINAL INSTRUCTION NO. 16

If you find that Charter Oak breached the policy, you must determine whether this breach caused Dziadek damages. Dziadek claims breach of contract damages in the form of the delay in payment on the UIM and AMP benefits caused by Charter Oak allegedly having prevented her from satisfying the conditions precedent to receipt of these benefits.

The measure of damages for a 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 a breach of contract that are not clearly ascertainable in both their nature and origin are unrecoverable.

If you find for Dziadek on the breach of contract claim for either UIM or AMP benefits or both, you must determine the date when—but for the breach of contract—Dziadek would have formalized her UIM and/or AMP claim and in turn when Charter Oak would have then owed Dziadek under the policy. Based on what you find, this Court will calculate the amount of interest for the delay in payment under the applicable statute. If you find for Charter Oak on the breach of contract claim or if you find that Dziadek has not shown by the preponderance of the evidence that she would have formalized the UIM or AMP claim any earlier than she did, then Dziadek is entitled to no recovery on her breach of contract claim.

FINAL INSTRUCTION NO. 17

Some of these jury instructions use the phrase “legally caused.” 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. For a legal cause to exist, the harm suffered must be a foreseeable consequence of the act complained of, and not merely remotely connected to the events leading up to the injury.

FINAL INSTRUCTION NO. 18

The law recognizes a tort claim for bad faith against an insurance company. Dziadek claims that Charter Oak committed the tort of bad faith in how it investigated, handled, and allegedly denied at one point a claim for insurance coverage for UIM benefits made by or on behalf of Dziadek. Charter Oak denies that it committed the tort of bad faith in this case.

FINAL INSTRUCTION NO. 19

To establish liability for the tort of insurance bad faith, Dziadek must prove all of the following by a preponderance of the evidence:

***One*, Charter Oak did not have a reasonable basis for denying or delaying the payment of UIM benefits to Dziadek;**

***Two*, Charter Oak either knew it did not have a reasonable basis or acted recklessly in determining whether it had a reasonable basis for delaying or denying the payment of UIM benefits to Dziadek; and**

***Three*, Charter Oak's actions thereby legally caused Dziadek damages.**

If you find that each of the three elements has been proved by a preponderance of the evidence, your verdict on the bad faith claim must be for Dziadek. If, on the other hand, any of these elements has not been proved by a preponderance of the evidence, then your verdict must be for Charter Oak.

However, an insurance company may challenge claims which are fairly debatable. An insurance company does not commit the tort of bad faith simply because it makes a mistake or acts negligently. Rather, Charter Oak can be held liable for bad faith only where it has knowledge of or recklessly delayed or denied paying Dziadek UIM benefits without a reasonable basis.

INSTRUCTION NO. 20

Your determination of whether Charter Oak acted in bad faith must be based on the facts and law available to Charter Oak at the time Charter Oak allegedly denied or delayed coverage or payment to Dziadek.

FINAL INSTRUCTION NO. 21

Dziadek contends that Charter Oak committed the tort of fraud when it told her in Styles's February 12, 2009 letter that she did not have coverage under the policy and when Styles sent only portions of the policy thereafter in February of 2009. Charter Oak disputes this claim, arguing that under the circumstances it did not provide any false information to Dziadek. To prevail on her fraud claim, Dziadek must prove each of the following elements by a preponderance of the evidence:

One, Charter Oak made a representation as a statement of fact;

Two, the representation of fact was untrue;

Three, Charter Oak knew that the representation was untrue or else recklessly made it;

Four, Charter Oak made the representation with the intent to deceive Dziadek and for the purpose of inducing her to act on it;

Five, Dziadek did in fact rely on the representation;

Six, Dziadek's reliance on the representation legally caused her damage.

If you find that each of these six elements has been proved by a preponderance of the evidence, your verdict on the fraud claim must be for Dziadek. If, on the other hand, any of these elements has not been proved by a preponderance of the evidence, then your verdict must be for Charter Oak.

FINAL INSTRUCTION NO. 22

Dziadek contends that Charter Oak committed the tort of deceit by not disclosing that she was an insured under the policy. Charter Oak disputes this claim and argues that truthful information was provided to Dziadek as required by the circumstances. To prevail on her deceit claim, Dziadek must prove each of the following elements by a preponderance of the evidence:

One, Charter Oak had a duty to disclose a material fact to Dziadek;

Two, Charter Oak willfully concealed a material fact or willfully gave information of other facts which were likely to mislead because of Charter Oak's failure to communicate the material fact;

Three, Charter Oak acted with the intent to induce Dziadek to alter her position to her injury or risk;

Four, the undisclosed information was something Dziadek could not discover by acting with reasonable care;

Five, Dziadek relied on the lack of information to her detriment; and

Six, Dziadek was legally caused damages as a result.

If you find that each of these six elements has been proved by a preponderance of the evidence, your verdict on the deceit claim must be for Dziadek. If, on the other hand, any of these elements has not been proved by a preponderance of the evidence, then your verdict must be for Charter Oak.

FINAL INSTRUCTION NO. 23

There is no negligence claim made in this case. Negligence principles do not apply to determine if a contract is or is not breached. A party does not have to prove negligence to show a breach of contract.

Likewise, for intentional tort claims for insurance bad faith, fraud, and deceit, intention matters because an intent to deceive is required for fraud or deceit, and because insurance bad faith requires a showing either of knowledge of the absence of a reasonable basis for denying or delaying payment, or of reckless disregard for the absence of such a reasonable basis.

A mere mistake or negligent act is not enough to show intent for insurance bad faith, fraud, or deceit. Similarly, it is no legal defense to breach of contract, insurance bad faith, fraud, or deceit that the insured or the insured's lawyer acted in a negligent manner.

INSTRUCTION NO. 24

You have heard that a South Dakota statute requires an insurance carrier to respond within 30 days to an insured. Failure to do so is not proof of bad faith, but may be considered along with all other evidence.

INSTRUCTION NO. 25

You heard evidence about how The Travelers Indemnity Company, the parent company of Charter Oak, evaluates and compensates employees, including Faith Styles and certain others. This testimony was received for a limited purpose and subject to this cautionary instruction.

First, testimony about how such employees are evaluated and compensated is not relevant to, and cannot be used by you in any way, in determining: 1) if Charter Oak breached the insurance contract by preventing or materially hindering Dziadek from performing conditions precedent to formalizing a UIM claim or AMP claim; and 2) what, if any compensatory damages Charter Oak should pay if you find for Dziadek on any of her claims. Testimony about how such employees are evaluated and compensated is only relevant to determining whether Charter Oak committed the intentional torts of insurance bad faith or fraud and deceit. These claims are called “intentional torts” because the intent of the Defendant matters. The intent of the Defendant does not matter to the questions of whether there was a breach of contract or to what a plaintiff’s compensatory damages might be.

Second, the relevance of this testimony about evaluation and compensation practices is sharply contested by the parties. Dziadek asserts that it explains why Faith Styles and others acted as they did in this case, while Charter Oak asserts that the evaluation and compensation practices had no influence on what Faith Styles and others did here. Ultimately, this dispute is a fact issue for you to decide. If you believe that the evaluation and compensation system affected what Faith Styles and others did in this case, you may use the evidence in considering whether Charter Oak is liable only on the intentional tort claims of insurance bad faith and fraud and deceit. If you believe that the evaluation and compensation system had no effect on what Faith Styles and others did in this case, then you should disregard all testimony about the evaluation and compensation system.

FINAL INSTRUCTION NO. 26

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

- (1) Any out-of-pocket expenses Dziadek incurred as a result of Charter Oak's conduct, including reasonable attorney's fees and costs; and
- (2) Any other harm Dziadek experienced as a result of Charter Oak's conduct, including mental and emotional harm.

To recover damages for mental and emotional harm, Dziadek must establish that she sustained a pecuniary loss because of the bad faith of the insured. "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. 27

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

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.

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, during your deliberations, you must not communicate with or provide any information to anyone other than by note to me by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry, or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, Snapchat, LinkedIn, Instagram, YouTube, or Twitter, to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

Fifth, 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, 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 court security officer that you are ready to return to the courtroom. Depending on what your verdict is, you may have one additional issue to consider.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>LAURA DZIADEK, Plaintiff, vs. THE CHARTER OAK FIRE INSURANCE COMPANY, d/b/a TRAVELERS, Defendant.</p>	<p>4:11-CV-4134-RAL VERDICT FORM</p>
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. Did Charter Oak breach the insurance contract by preventing Dziadek from performing a condition precedent; that is, formalizing her UIM and/or AMP claim at an earlier time?
 - 1.A. As to the UIM claim? (check one box)
 Yes (verdict for Dziadek)
 No (verdict for Charter Oak)
 - 1.B. As to the AMP claim? (check one box)
 Yes (verdict for Dziadek)
 No (verdict for Charter Oak)
2. If, and only if, you answer “yes” to either question 1.A. or 1.B. or both, then when would Dziadek have otherwise formalized her AMP or UIM claim?
 - 2.A. Date on which UIM claim would have been formalized: _____
 - 2.B. Date on which AMP claim would have been formalized: _____

The Court will calculate damages in the form of interest based on your answers to these questions. If you answered “no” to both parts of question 1, then do not answer (that is, skip) this question.

3. Did Charter Oak commit the tort of insurance bad faith regarding Dziadek's UIM claim? (check one box)

Yes (verdict for Dziadek)

No (verdict for Charter Oak)

4.A. Did Charter Oak commit the tort of fraud to injure Dziadek? (check one box)

Yes (verdict for Dziadek)

No (verdict for Charter Oak)

4.B. Did Charter Oak commit the tort of deceit to injure Dziadek? (check one box)

Yes (verdict for Dziadek)

No (verdict for Charter Oak)

5. [Answer this if, and only if, you answered "yes" to at least one of the questions 3 or 4.A. or 4.B. If you answered "no" to all of the questions 3 and 4.A. and 4.B., then do not answer question 5.] What damages has Dziadek shown for the intentional torts?

A. Interest on UIM monies

Yes (verdict for Dziadek)

No (verdict for Charter Oak)

The Court will calculate interest if you answer "yes" and will not duplicate the interest recovery if you awarded any interest for breach of contract on the UIM claim. If you answer "yes," indicate the date from which interest should run here:

(This date should be the same as your answer to 2.A., if you answered that question.)

B. Other damages, besides prejudgment interest, for:

i) Out-of-pocket expenses Dziadek incurred as a result of Charter Oak's conduct, including reasonable attorney's fees and costs: _____

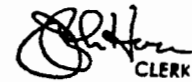
ii) Any other harm Dziadek experienced as a result of Charter Oak's conduct, including mental and emotional harm: _____

DATED May ____, 2016

Foreperson

FILED

MAY 27 2016


CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

LAURA DZIADEK,

Plaintiff,

vs.

THE CHARTER OAK FIRE INSURANCE
COMPANY, d/b/a TRAVELERS,

Defendant.

4:11-CV-04134-RAL

PHASE II FINAL
JURY INSTRUCTIONS

INSTRUCTION NO. 28

In addition to any actual damages that you awarded to Dziadek in Phase I, you may also, in your discretion, award punitive damages. Punitive damages may not be awarded for a breach of contract or negligence, but only related to conduct that justified your finding of one or more intentional torts.

In Phase I, you awarded compensatory damages to compensate Dziadek for her damages legally caused by Charter Oak. You should award punitive damages only if Charter Oak's blame is so reprehensible that it warrants further sanctions to punish or deter it.

While you may consider evidence of actual harm to nonparties as part of your determination of reprehensibility, you may not use such evidence to punish a defendant for injury the defendant may have inflicted upon nonparties.

INSTRUCTION NO. 29

In addition to any actual damages that you have awarded to Dziadek, you may also, in your discretion, award punitive damages if you find that Dziadek suffered injury to person or property as a result of the oppression, fraud, malice, intentional misconduct, or willful and wanton misconduct of Charter Oak. Dziadek has the burden of proof, by a preponderance of the evidence, on the issue of punitive damages. The purpose of awarding punitive damages is to set an example and to punish Charter Oak.

If you find that punitive damages should be awarded, then in determining the amount, you must consider the following five factors:

(1) The intent of Charter Oak.

In considering Charter Oak's intent, you should examine the degree of reprehensibility of Charter Oak's misconduct, including, but not limited to, the following factors:

- (a) whether the harm caused was physical as opposed to economic;
- (b) whether the tortious conduct evinced an indifference to, or reckless disregard of, the health or safety of others;
- (c) whether the target of the conduct was vulnerable financially;
- (d) whether the conduct involved repeated actions or was an isolated incident; and
- (e) whether the harm was the result of intentional malice, trickery or deceit, or mere accident.

(2) The amount awarded in actual damages.

In considering this factor, you should consider:

- (a) whether Dziadek has been completely compensated for the economic harm caused by Charter Oak;
- (b) the relationship between the harm (or potential harm) suffered by Dziadek and the punitive damages award;
- (c) the magnitude of the potential harm, if any, that Charter Oak's conduct would have caused to its intended victim if the wrongful plan had succeeded; and
- (d) the possible harm to other victims that might have resulted if similar future behavior were not deterred.

The amount of punitive damages must bear a reasonable relationship to the actual damages.

(3) The nature and enormity of the wrong.

(4) Charter Oak's financial condition.

(5) All of the circumstances concerning Charter Oak's actions, including any mitigating circumstances which may operate to reduce, without wholly defeating, punitive damages.

You may not consider any one factor alone, but should consider all five factors in determining the amount, if any, of an award.

INSTRUCTION NO. 30

The term “oppression” as used in these instructions is conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.

INSTRUCTION NO. 31

“Malice” is not simply the doing of an unlawful or injurious act; it implies that the act complained of was conceived in the spirit of mischief or of criminal indifference to civil obligations. Malice may be inferred from the surrounding facts and circumstances.

Actual malice is a positive state of mind, evidenced by the positive desire and intention to injure another, actuated by hatred or ill will toward that person. Presumed, or legal, malice is malice which the law infers from or imputes to certain acts. Legal malice may be imputed to an act if the person acts willfully or wantonly to the injury of the other in reckless disregard of the other’s rights. Hatred or ill will is not always necessary.

INSTRUCTION NO. 32

Conduct is intentional when a person acts or fails to act for the purpose of causing injury or knowing that injury is substantially certain to occur.

Knowledge or intent may be inferred from the person's conduct and the surrounding circumstances.

INSTRUCTION NO. 33

Willful and wanton misconduct is more than negligent conduct, but less than intentional conduct. Conduct is willful and wanton when a person acts or fails to act when the person knows, or should have known, that injury is likely to occur.

INSTRUCTION NO. 34

Punitive damages may be awarded against a principal because of an act by an agent only in the following circumstances:

- (1) The principal or a managerial agent authorized the doing and the manner of the agent's act; or
- (2) The agent was unfit and the principal or a managerial agent was reckless in employing or retaining the agent; or
- (3) The agent was employed in a managerial capacity and was acting in the scope of employment; or
- (4) The principal or managerial agent of the principal ratified or approved the agent's act.