

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

MARSHALLE (SHELLEY) PFAB,

Plaintiff,

vs.

**UNITED WISCONSIN INS. CO.,
d/b/a UNITED HEARTLAND,**

Defendant.

No. C10-1024

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

The instructions I am about to give you now 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 earlier 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

The fact that United Wisconsin Ins. Co., d/b/a United Heartland 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.

Since a corporation can act only through its officers, employees, or other agents, any act of an officer, employee, or other agent of United Heartland, in the performance of that person's duties, is held in law to be an act of United Heartland.

FINAL INSTRUCTION NO. 3

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claims rely upon that fact. The party who has the burden of proving a fact must prove it by the greater weight or preponderance of the evidence. To prove something by the greater weight or preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved.

The greater weight or preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

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. You should, therefore, put it out of your minds.

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 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

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

FINAL INSTRUCTION NO. 6

An employer's workers' compensation insurance company must provide reasonable medical services for all work-related injuries. Pfab claims United Heartland acted in bad faith in refusing to pay medical bills associated with a work-related injury, and in refusing to authorize future medical treatment. To recover on her claim of bad faith, Pfab must prove all of the following propositions:

- 1. United Heartland refused to pay Pfab's compensable medical bills and/or refused to authorize future work-related medical treatment; and**
- 2. There was no reasonable basis for refusing to pay the medical bills and/or refusing to authorize treatment; and**
- 3. United Heartland knew or had reason to know that there was no reasonable basis for refusing to pay the medical bills and/or authorize treatment; and**
- 4. The refusal was a cause of damage to Pfab; and**
- 5. The nature and extent of damage.**

If Pfab has failed to prove any of these propositions, then she is not entitled to damages. If Pfab has proved all of these propositions, then she is entitled to damages in some amount.

FINAL INSTRUCTION NO. 7

Regarding element number 1 of Instruction No. 6, a medical bill is “compensable” and must be paid if the workers’ compensation claimant shows that the medical expenses were incurred, that the fee charged by the medical provider was fair and reasonable, that the treatment was reasonable and necessary, and that the expenses are causally connected to the work injury.

Regarding element numbers 2 and 3 of Instruction No. 6, a “reasonable basis” for refusing to pay the medical bills and/or authorize future medical treatment exists if the claim is fairly debatable. A claim is fairly debatable if it is open to dispute on any logical basis, or if reasonable minds could differ on the facts or law. A claim is not fairly debatable if, at the time the claim was denied, the denial was not based on an honest and informed judgment. A claim may be fairly debatable when initially denied, but if the insurance company receives additional information indicating there is no longer a reasonable basis to deny the claim, then it is no longer fairly debatable.

In determining whether there was a reasonable basis to deny a medical bill, you may consider whether the claim was properly investigated, and whether the results of the investigation were properly considered. However, an imperfect investigation, standing alone, will not support a finding of bad faith if the insurance company has a reasonable basis for denying the claim.

Regarding element number 4 of Instruction No. 6, the conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

FINAL INSTRUCTION NO. 8

Regarding element number 5 of Instruction No. 6, if you find Pfab is entitled to recover damages, then it is your duty to determine the amount. In doing so, you shall consider the following items in determining an amount which will fully compensate Pfab for the damages she incurred.

- 1. Past Medical Bills. The reasonable cost of compensable unpaid medical bills to the present time.**
- 2. Future Medical Expenses. The present value of reasonable and necessary medical services which will be incurred in the future for Pfab's work-related injury.**
- 3. Past Pain and Suffering. Physical and mental pain and suffering from the date of United Heartland's wrongful conduct to the present time. Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life. Pfab may not recover for pain and suffering caused by the injury itself, but only for the additional pain and suffering, if any, caused by United Heartland's bad faith.**
- 4. Future Pain and Suffering. Future physical and mental pain and suffering.**

The amount you assess for physical and mental pain and suffering in the past and future cannot be measured by any exact or mathematical standard. You must use your sound judgment based on an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by United Heartland as provided by the evidence.

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FINAL INSTRUCTION NO. 8 (Cont'd)

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of rate, will compensate Pfab for future losses.

A Standard Mortality Table indicates the normal life expectancy of individuals the same age as Pfab is 42.94 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Pfab's health, habits, occupation and lifestyle, when deciding the issue of future damages.

In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of these estimates will be your item of damage.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

The amounts, if any, you find for each of the above items will be used to answer the verdict form.

FINAL INSTRUCTION NO. 9

Punitive damages may be awarded if Pfab has proven by a preponderance of clear, convincing and satisfactory evidence that United Heartland's conduct constituted a willful and wanton disregard for the rights of another and caused actual damage to Pfab.

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage United Heartland and others from like conduct in the future. You may award punitive damages only if United Heartland's conduct warrants a penalty in addition to the amount you award to compensate for Pfab's actual damages.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of United Heartland's conduct that harmed Pfab.
2. The amount of punitive damages which will punish and discourage like conduct by United Heartland. You may consider United Heartland's financial condition or ability to pay. You may not, however, award punitive damages solely because of United Heartland's wealth or ability to pay.
3. Pfab's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to Pfab.
4. The existence and frequency of prior similar conduct.

FINAL INSTRUCTION NO. 10

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 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.

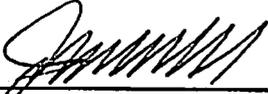
Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

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FINAL INSTRUCTION NO. 10 (Cont'd)

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.

DATED this 21st day of March, 2012.



JON STUART SCOLES
UNITED STATES MAGISTRATE JUDGE
NORTHERN DISTRICT OF IOWA