

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

NORTH STAR MUTUAL INSURANCE
COMPANY,

Plaintiff,

v.

THOMAS W. LIPPS,

Defendant.

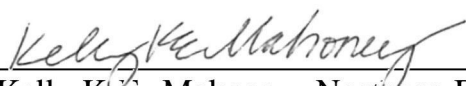
Case No. 20-CV-3042-KEM

JURY INSTRUCTIONS

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DATED: August 7, 2023.



Kelly K.E. Mahoney, Northern District of Iowa
Chief United States Magistrate Judge

INSTRUCTION NO. 1 - INTRODUCTION

Members of the Jury: I am now going to give you some instructions about this case and about your duties as jurors. At the end of the trial, I will give you more instructions. I may also give you instructions during the trial. All instructions - those I give you now and those I give you later - whether they are in writing or given to you orally - are equally important and you must follow them all.

You must leave your cell phone, PDA, smart phone, iPhone, tablet computer, and any other wireless communication devices in the jury room during the trial and may only use them during breaks. However, you are not allowed to have those devices in the jury room during your deliberations. You may give them to the deputy clerk or court security officer for safekeeping just before you start to deliberate. They will be returned to you when your deliberations are complete.

This is a civil case brought by North Star Mutual Insurance Company against Iowa lawyer Thomas Lipps. In late 2017, North Star issued a homeowners insurance policy to Ehrich Pakala. North Star retained Lipps to provide legal services when suspicions arose after Pakala filed a claim under his new insurance policy shortly after it was issued. North Star claims Lipps performed his legal services negligently and that this negligence caused North Star damages. Lipps denies that he was negligent or that his conduct caused any damage to North Star.

Your duty is to decide what the facts are from the evidence. You are allowed to consider the evidence in the light of your own observations and experiences. After you have decided what the facts are, you will have to apply those facts to the law that I give you in these and in my other instructions. That is how you will reach your verdict. Only you will decide what the facts are. However, you must follow my instructions, whether you agree with them or not. You have taken an oath to follow the law that I give you in my instructions.

Do not let sympathy, or your own likes or dislikes, influence you. The law requires you to come to a just verdict based only on the evidence, your common sense, and the law that I give you in my instructions, and nothing else.

Nothing I say or do during this trial is meant to suggest what I think of the evidence or what your verdict should be.

INSTRUCTION NO. 2 - CORPORATE PARTIES

The fact that a party is a corporation or limited liability company should not affect your decision. All persons are equal before the law, and corporations and limited liability companies, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 3 - BURDEN OF PROOF

You will have to decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved by the greater weight of the evidence if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than “more likely true than not true.” It applies in criminal cases, but not in this civil case; so put it out of your mind.

INSTRUCTION NO. 4 - EVIDENCE

When I use the word “evidence,” I mean:

- Testimony of witnesses, which may be either “live” or “by deposition.”
 - If a party testifies under oath on the witness stand or by live video, the party’s words constitute evidence.
 - A “deposition” is the recorded answers of a witness under oath to questions asked by a party or lawyer before trial. Deposition testimony may be presented by video recording or by reading the written transcript aloud. You should consider the deposition testimony, and judge its credibility, as you would that of any witness who testifies here in person or by live video. When the deposition is read to you, you should not place any significance on the manner or tone of voice used to read the witness’s answers to you.
- Answers to interrogatories, which are written answers, under oath, to written questions. The question and answer must be considered as if they had been stated in court.
- Exhibits admitted into evidence, such as documents and other things.
- Facts that I tell you the parties have agreed are true and any other facts that I tell you to accept as true.
 - You must treat stipulated facts as proved.

The following things are **not** evidence:

- Statements, arguments, questions, and comments by a lawyer.
- Exhibits that are not admitted into evidence.
- Objections and rulings on objections.
- Testimony that I tell you to disregard.
- Anything you see or hear about this case outside the courtroom.

Also, I might tell you that you can consider a piece of evidence for one purpose only, and not for any other purpose. If that happens, I will tell you what purpose you can consider the evidence for and what you are not allowed to consider it for. You need to pay close attention when I give an instruction about evidence that you can consider for only certain purposes, because you might not have that instruction in writing later in the jury room.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You should not be concerned with those terms and should consider both kinds of evidence because the law makes no distinction between the weight to be given to direct and circumstantial evidence.

INSTRUCTION NO. 5 - TESTIMONY OF WITNESSES

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.

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 6 - EXPERT WITNESS TESTIMONY

You may hear 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 education and experience of the witness, the reasons given for the opinion, and all the other evidence in the case.

The expert witnesses may be asked to assume certain facts are true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question is not proved by the evidence, you should decide if that omission affects the value of the opinion.

***INSTRUCTION NO. 7 – DEMONSTRATIVE
SUMMARIES NOT RECEIVED AS EVIDENCE***

Certain diagrams and summaries may be shown to you in order to help explain the facts disclosed by the records or other underlying evidence in the case. These diagrams or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts shown by the evidence in the case, you should disregard these diagrams and summaries and determine the facts from the records or other underlying evidence.

INSTRUCTION NO. 8 - STIPULATED FACTS

North Star and Lipps have stipulated – that is, they have agreed – that the following facts are true:

- At all relevant times, North Star has engaged in the business of selling insurance policies to clients, including in Iowa.
- At all relevant times, Lipps has been a lawyer duly licensed to practice law within the state of Iowa.
- At all relevant times, Ehrich Pakala owned property at 205 Prospect Avenue, Waterloo, Black Hawk County, Iowa 50703.
- On January 3, 2018, North Star took a statement from Pakala that stated his previous insurance company, Nationwide Insurance, had sent a Notice of Cancellation of Insurance.
- On January 4, 2018, North Star sent a reservation of rights letter to Pakala.
- On January 24, 2018, North Star took an additional statement from Pakala that acknowledged Nationwide Insurance had sent him a Notice of Cancellation dated November 3, 2017, which was effective December 23, 2017. Pakala stated he had not seen the Notice of Cancellation until December 23, 2017, as it had been misplaced.
- Lipps issued an opinion letter on February 5, 2018, indicating that North Star was entitled to cancel and rescind the policy because of Pakala’s material misrepresentation concerning Nationwide’s non-renewal or cancellation of Pakala’s homeowner’s policy.
- On February 7, 2018, North Star voided Pakala’s home insurance policy effective December 23, 2017.
- On August 26, 2019, Attorney Benjamin Weston, representing Pakala, alleged that North Star had violated Iowa law by voiding the Pakala policy on the basis of an alleged misrepresentation in Pakala’s application, since North Star had

failed to provide Pakala a copy of that application upon issuance of the policy. Weston cited Iowa Code sections 515.133 and 515.134.

- Weston alleged that because North Star had violated Iowa law in voiding and rescinding Pakala's policy and thereby wrongfully denied Pakala's claim, North Star was at risk of bad faith liability, including compensatory and punitive damages.
- North Star sent Weston's August 26, 2019 letter to Lipps. On September 6, 2019, Lipps responded to Weston, agreeing that Iowa Code section 515.134 prevented North Star from pleading falsity of the application in any action upon the policy. Lipps requested to examine Pakala under oath.
- On September 19, 2019, Weston demanded \$350,000 from North Star on behalf of Pakala. This amount included the full policy benefits North Star should have paid to Pakala for the water damage, plus interest, as well as damages based on Pakala's significant hardship, emotional distress, and cost to enforce his rights; North Star's bad faith; and punitive damages.
- North Star paid Pakala \$125,384.20 for the original loss amount plus interest.

You must, therefore, treat these facts as having been proved.

INSTRUCTION NO. 9 – NORTH STAR’S NEGLIGENCE CLAIM

Plaintiff North Star must prove all of the following propositions by a preponderance of the evidence:

First, an attorney-client relationship existed between North Star and Lipps.

- The parties agree an attorney-client relationship existed between North Star and Lipps.

Second, Defendant Lipps was negligent in providing his February 2018 legal opinion letter. “Negligence” means the failure to use the degree of skill, care, and learning ordinarily possessed and exercised by other attorneys in similar circumstances.

North Star must prove Lipps was negligent in failing to advise North Star that under Iowa Code sections 515.133 and 515.134, North Star could not rescind Pakala’s homeowner’s insurance policy based on misrepresentations in Pakala’s application for homeowner’s insurance unless a copy of his application had been provided to him when the policy was issued.

- Iowa Code sections 515.133 and 515.134 state that upon issuance of an insurance policy, the insurance company must provide the insured with a copy of his application to make it a part of the homeowner’s insurance policy; the failure to do so precludes the insurance company from relying on misrepresentations in the application to void the policy.

Third, the negligence caused damages to North Star.

- The conduct of a party is a cause of damages when the damages would not have happened except for the conduct.

Fourth, the amount of damages.

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

INSTRUCTION NO. 10 - DAMAGES

If you find for North Star on its negligence claim, North Star may recover the following damages:

- a. The reasonable amount paid to Pakala to settle his claims against North Star.
 - North Star does not have to prove that Pakala would have prevailed on his claims against North Star if his case had gone to trial. Rather, North Star's damages are based on the *potential* liability it faced.
 - In determining the reasonableness of the settlement, you should consider the likelihood that Pakala would have established liability; the size of the possible recovery; and the risks of going to trial. In evaluating Pakala's case, you may consider factors including but not limited to:
 - Verdicts in comparable cases;
 - The likelihood of favorable or unfavorable rulings on legal defenses if Pakala's case had gone to trial;
 - The evidence in North Star's possession related to Pakala's claim at the time of settlement;
 - Evidence issues if Pakala's case had gone to trial; and
 - Expert opinion of trial lawyers evaluating Pakala's case.
 - In evaluating Pakala's case, you may also consider the elements of Pakala's claims:
 - Breach of insurance contract requires proof that Pakala suffered a loss covered by his home insurance policy with North Star; that North Star did not pay Pakala's claim in a timely manner; and the nature and extent of damage. The measure of damages is an amount that would place Pakala in as good a position as he would have enjoyed if North Star had performed the contract.
 - Bad faith requires proof that North Star had no reasonable basis for rescinding Pakala's insurance policy; that North Star knew or had

reason to know that there was no reasonable basis for rescinding Pakala's insurance policy; and that the rescission caused damage to Pakala.

- A reasonable basis exists to deny the claim if the claim is fairly debatable, i.e., open to dispute on any logical basis.
 - Relying on advice of counsel does not automatically establish good faith, although it is factor to consider in determining whether a party acted in good or bad faith.
- Punitive damages are damages to punish and discourage the defendant and others from like conduct in the future, and they may be awarded in addition to the amount awarded to compensate for the plaintiff's actual injuries. To recover punitive damages, Pakala would have had to prove that North Star acted with a willful and wanton disregard for his rights. Conduct is willful and wanton when a person intentionally acts unreasonably in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

b. Attorney's fees North Star incurred to settle Pakala's claim.

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

INSTRUCTION NO. 11 - OUTLINE OF TRIAL

The trial will proceed in the following manner:

First, North Star's lawyer may make an opening statement. Next, Lipps's lawyer may make an opening statement. An opening statement is not evidence, but it is a summary of the evidence the parties and lawyers expect you will see and hear during the trial.

After opening statements, North Star will then present evidence. Lipps's lawyer will have a chance to cross-examine North Star's witnesses. After North Star has finished presenting its case, Lipps may present evidence, and North Star's lawyer will have a chance to cross-examine Lipps's witnesses.

After you have seen and heard all of the evidence from all sides, North Star's and Lipps's lawyers will make closing arguments that summarize and interpret the evidence. Just as with opening statements, closing arguments are not evidence. After the closing arguments, I will instruct you further on the law, and you will go to the jury room to deliberate and decide on your verdict.

INSTRUCTION NO. 12 - QUESTIONS BY JURORS

When the parties and lawyers have finished asking all of their questions of a witness, you will be allowed to propose questions in order to clarify the testimony.

1. Do not express any opinion about the testimony or argue with a witness in your questions.
2. Submit your questions in writing by passing them to the courtroom deputy.
3. Do not sign your questions.
4. I will review each question with the parties and attorneys. I may not ask your question.
5. I may decide that the question is not proper under the rules of evidence.
6. Even if the question is proper, you may not get an immediate answer because a later witness or exhibit may answer your question.
7. Do not be concerned or embarrassed if your question is not asked; sometimes even parties' and lawyers' questions are not allowed. Remember, you are not advocates for either side, but impartial judges of the facts.

INSTRUCTION NO. 13 - OBJECTIONS

A party or lawyer may object when they believe something should not be a part of the trial. Do not be influenced one way or the other by objections. If I sustain an objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you have to ignore the question or the exhibit, and you must not try to guess what the information might have been.

INSTRUCTION NO. 14 - NOTE-TAKING

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written copy of the testimony to refer to. Because of this, you have to pay close attention to the testimony and other evidence as it is presented here in the courtroom.

If you wish, however, you may take notes to help you remember what witnesses say. If you do take notes, do not show them to anyone until you and your fellow jurors go to the jury room to decide the case after you have heard and seen all of the evidence. And do not let taking notes distract you from paying close attention to the evidence as it is presented. The Clerk will provide each of you with a pad of paper and a pen or pencil. At each recess, leave them on your chairs.

When you leave at night, your notes will be locked up and will not be read by anyone. They will be returned to you in the morning.

Upon reaching a verdict, you may leave the notes in the jury room, and they will be destroyed.

INSTRUCTION NO. 15 - BENCH CONFERENCES AND RECESSES

During the trial, I will sometimes need to talk privately with the parties and lawyers. I may talk with them here at the bench while you are in the courtroom, or I may call a recess and let you leave the courtroom while I talk with the parties and lawyers. Either way, please understand that while you are waiting, we are working. We have these conferences to make sure that the trial is proceeding according to the law and to avoid confusion or mistakes. We will do what we can to limit the number of these conferences and to keep them as short as possible.

INSTRUCTION NO. 16 - CONDUCT OF THE JURY

Jurors, to make sure this trial is fair to all parties, you must follow these rules:

First, do not talk or communicate among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to consider your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone tries to talk to you about the case during the trial, please report it to the court security officer or courtroom deputy.

Fourth, during the trial, do not talk with or speak to any of the parties, lawyers, or witnesses in this case – not even to pass the time of day. It is important not only that you do justice in this case, but also that you act accordingly. If a person from one side of the lawsuit sees you talking to a person from the other side – even if it is just about the weather – that might raise a suspicion about your fairness. So, when the lawyers, parties, and witnesses do not speak to you in the halls, on the elevator, or the like, understand that they are not being rude. They know they are not supposed to talk to you while the trial is going on, and they are just following the rules.

Fifth, you may need to tell your family, close friends, and other people that you are a part of this trial. You can tell them when you have to be in court, and you can warn them not to ask you about this case, tell you anything they know or think they know about this case, or talk about this case in front of you. But, you must not communicate with anyone or post information in any manner about the parties, witnesses, participants, claims, evidence, or anything else related to this case. You must not tell anyone anything about the jury's deliberations in this case until after I accept your verdict or until I give you specific permission to do so. If you talk about the case with someone besides the other jurors during deliberations, it looks as if you might already have decided the case

or that you might be influenced in your verdict by their opinions. That would not be fair to the parties, and it might result in the verdict being thrown out and the case having to be tried over again. During the trial, while you are in the courthouse and after you leave for the day, do not give any information to anyone, by any means, about this case.

For example, do not talk face-to-face or use any electronic device, such as a telephone, cell phone, smart phone, Blackberry, PDA, computer, or computer-like device.

Likewise, do not use the Internet or any Internet service; do not text or send instant messages; do not go on an Internet chat room, blog, or other websites such as Facebook, YouTube, Twitter, or Snapchat. In other words, do not communicate with anyone about this case – except for the other jurors during deliberations – until I accept your verdict.

Sixth, do not do any research – on the Internet, in libraries, newspapers, or otherwise – and do not investigate this case on your own. Do not visit or view any place discussed in this case, and do not use the Internet or other means to search for or view any place discussed in the testimony. Also, do not look up any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the court.

Seventh, do not read any news stories or Internet articles or blogs that are about the case, or about anyone involved with it. Do not listen to any radio, television, or digital-streaming reports about the case or about anyone involved with it. In fact, until the trial is over, I suggest that you avoid reading any news stories at all, and avoid listening to any television, radio, or digital-streaming newscasts at all. I do not know whether there will be news reports about this case, but if there are, you might accidentally find yourself reading or listening to something about the case. If you want, you can have someone collect information or clip out any stories and set them aside to give to you after the trial is over. I can assure you, however, that by the time you have heard all the evidence in this case, you will know what you need to return a just verdict.

The parties have a right to have you decide their case based only on evidence admitted here in court. If you research, investigate, or experiment on your own, or get information from other sources, your verdict might be influenced by inaccurate, incomplete, or misleading information. Witnesses here in court take an oath to tell the truth, and the accuracy of their testimony is tested through cross-examination. All of the parties are entitled to a fair trial and an impartial jury, and you have to conduct yourselves in a way that assures the integrity of the trial process. If you decide a case based on information not admitted in court, you will deny the parties a fair trial. You will deny them justice. Remember, you have taken an oath to follow the rules, and you must do so.

Eighth, do not make up your mind during the trial about what your verdict should be. Keep an open mind until after you and your fellow jurors have discussed all the evidence.

INSTRUCTION NO. 17 - ADDITIONAL INSTRUCTIONS

Members of the jury, the instructions I gave at the beginning of the trial and during the trial are still in effect. Now I am going to give you some additional instructions.

You have to follow all of my instructions – the ones I gave you earlier, as well as those I give you now. Do not single out some instructions and ignore others, because they are all important. This is true even though I am not going to repeat some of the instructions I gave you at the beginning of or during the trial.

Remember, you have to follow all instructions, no matter when I give them, and whether or not you have written copies.

INSTRUCTION NO. 18 - JUDGE'S OPINION

I have not intended to suggest what I think your verdict should be by any of my rulings or comments during the trial.

INSTRUCTION NO. 19 - DELIBERATIONS

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

First, you will select a 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 this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

- *All phones and electronic devices will be locked up in a separate room.*
- *If one juror leaves the jury room, ALL discussions about the case must stop.*
- *If a juror leaves the jury room, a court security officer must accompany them and have them in view.*

Each of you must come to your own decision, but only after you have considered all the evidence, discussed the evidence fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges – judges of the facts. Your only job is to study the evidence and decide what is true.

Third, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Place the note in a sealed envelope and give the note to the designated court employee. I will answer you as soon as I can, either in writing or here in court. While you are deliberating, do not tell anyone - including me - how many jurors are voting for any side.

Fourth, your verdict has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

Finally, the verdict form is your written decision in this case. You will take this form to the jury room, and when you have all agreed on the verdict, your foreperson will fill in the form and sign and date it. Write “we have reached a verdict” on a sheet of paper and have at least one juror sign it, place it in an envelope, and give it to the designated court employee.

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

NORTH STAR MUTUAL INS.
COMPANY,

Plaintiff,

v.

THOMAS W. LIPPS,

Defendant.

Case No. 20-CV-3042-KEM

VERDICT FORM

We the jury unanimously find the following verdict on the questions submitted:

Question 1 – Plaintiff North Star’s Negligence Claim:

Was Defendant Thomas Lipps negligent as defined in Instruction No. 9? (mark “yes” or “no”)

_____ YES _____ NO

If your answer is yes, move on and answer Question 2. If your answer is no, do not answer any more questions and sign and date the Verdict Form.

Question 2 – Damages:

State the amount of damages, if any, sustained by Plaintiff North Star as to each of the following items of damage. If Plaintiff North Star has failed to prove any item of damage, or has failed to prove any item of damage was caused by Defendant Lipps’s negligence, enter \$0 for that item.

- | | |
|--|----------|
| 1. Reasonable settlement amount | \$ _____ |
| 2. Attorney’s fees related to settlement | \$ _____ |
| TOTAL | \$ _____ |

Please sign and date the Verdict Form.

Date

Foreperson Signature