

CAUSE NO. 29,358

ROBERTA GODWARD, GAIL	§	IN THE DISTRICT COURT
SCHIAVONE-FRANKE, WILMA	§	
MAYES, ADELE AND DON THORNE,	§	
AND ALEXIS AND WILLIAM CHRISAN	§	
	§	
VS.	§	21ST JUDICIAL DISTRICT
	§	
ALLSTATE TEXAS LLOYDS, INC.,	§	
	§	
	§	
	§	BASTROP COUNTY, TEXAS

CHARGE OF THE COURT

Members of the Jury:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Allstate Texas Lloyd's, Inc. is responsible for the conduct of its adjuster's Ty Harlan Fletcher, Steve Dollery, and Josh Randall.

Each plaintiff bears the burden of proof for each of their own claims.

QUESTION NO. 1

As to each Plaintiff listed below, do you find from a preponderance of the evidence that each sustained accidental, direct physical loss or damage to their property that was covered by sudden and accidental damage from smoke.

Separately Answer "Yes" or "No" for each Plaintiff.

- a. Answer for Roberta Godward: Y
- b. Answer for Gail Franke: Y
- c. Answer for Wilma Mayes: Y
- d. Answer for Adele and Don Thorne: Y
- e. Answer for Alexis and William Chrisan: Y

QUESTION NO. 2:

If you answered "yes" to Question No. 1, then answer Question No. 2. Otherwise, do not answer Question No. 2

Did Allstate Texas Lloyd's, Inc. breach the insurance contract?

You are instructed that an insurance company breaches an insurance contract when it fails to comply with the terms of the insurance policy.

Separately Answer "Yes" or "No" for each Plaintiff.

- a. Answer for Roberta Godward: Y
- b. Answer for Gail Franke: Y
- c. Answer for Wilma Mayes: Y
- d. Answer for Adele and Don Thorne: Y
- e. Answer for Alexis and William Chrisan: Y

QUESTION NO. 3:

If you answered "yes" in question 2 for any defendant, then answer question 3 for that defendant. Otherwise, do not answer question 3.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate each of the following plaintiffs for the cost to repair their dwelling for a covered loss, if any, that resulted from Allstate Texas Lloyd's, Inc.'s failure to comply with the insurance contract?

Answer in dollars and cents separately for each Plaintiff:

- a. Answer for Roberta Godward: \$ 0
- b. Answer for Gail Franke: \$ 68,000
- c. Answer for Wilma Mayes: \$ 22,000
- d. Answer for Adele and Don Thorne: \$ 46,000
- e. Answer for Alexis and William Chrisan: \$ 43,000

QUESTION NO. 4:

Did Allstate Texas Lloyd's, Inc. engage in any unconscionable action or course of action that was a producing cause of damages to any of the plaintiffs?

"Producing cause" means a cause that was a substantial factor in bringing about the damage, if any, and without which the damage would not have occurred. There may be more than one producing cause.

An "unconscionable action or course of action" is an act or practice that, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.

Separately Answer "Yes" or "No" for each Plaintiff.

- a. Answer for Roberta Godward: Y
- b. Answer for Gail Franke: Y
- c. Answer for Wilma Mayes: Y
- d. Answer for Adele and Don Thorne: Y
- e. Answer for Alexis and William Chrisan: Y

QUESTION NO. 5:

Did Allstate Texas Lloyd's, Inc. fail to comply with its duty of good faith and fair dealing to any of the plaintiffs?

An insurer fails to comply with its duty of good faith and fair dealing by—

Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim when the insurer's liability has become reasonably clear, or

Refusing to pay a claim without conducting a reasonable investigation of the claim.

Separately Answer "Yes" or "No" for each Plaintiff.

- a. Answer for Roberta Godward: Y
- b. Answer for Gail Franke: Y
- c. Answer for Wilma Mayes: Y
- d. Answer for Adele and Don Thorne: Y
- e. Answer for Alexis and William Chrisan: Y

QUESTION NO. 6:

Did Allstate Texas Lloyd's, Inc. engage in any unfair or deceptive act or practice that caused damage to any of the Plaintiffs?

"Unfair or deceptive act or practice" means any of the following:

1. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim when the insurer's liability has become reasonably clear; or
2. Failing to provide promptly to any of the Plaintiffs a reasonable explanation of the factual and legal basis in the policy for an insurer's denial of the claim; or
3. Refusing to pay a claim without conducting a reasonable investigation of the claim; or

Separately Answer "Yes" or "No" for each Plaintiff.

- a. Answer for Roberta Goodward: Y
- b. Answer for Gail Franke: Y
- c. Answer for Wilma Mayes: Y
- d. Answer for Adele and Don Thorne: Y
- e. Answer for Alexis and William Chrisan: Y

QUESTION NO. 7

If you answered "yes" in question 4, 5, or 6 for any plaintiff, then answer question 7 for that plaintiff. Otherwise, do not answer question 7.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate each individual plaintiff for their damages, if any, that resulted from conduct described in question 4, 5 or 6?

Consider the following elements of damages, if any, and none other.

"Damages" that resulted in the conduct described in questions 4, 5 or 6 are those damages, if any, which were caused by the insurer separate and apart from the damages, if any, resulting from the non-payment of policy benefits.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer in dollars and cents separately for each Plaintiff:

- a. Answer for Roberta Godward: \$ 8,000
- b. Answer for Gail Franke: \$ 0
- c. Answer for Wilma Mayes: \$ 0
- d. Answer for Adele and Don Thorne: \$ 0
- e. Answer for Alexis and William Chrisan: \$ 0

QUESTION NO. 8:

If you answered "yes" in question 4, 5, or 6 for any plaintiff, then answer question 8 for that plaintiff. Otherwise, do not answer question 8.

Did Allstate Texas Lloyd's, Inc. engage in any such conduct knowingly?

"Knowingly" means actual awareness, at the time of the conduct, of the falsity, deception, or unfairness of the conduct in question. Actual awareness may be inferred where objective manifestations indicate that a company acted with actual awareness that its conduct was false, deceptive or unfair.

In answering this question, consider only the conduct that you have found was a producing cause of damages to each plaintiff.

Separately Answer "Yes" or "No" for each Plaintiff.

- a. Answer for Roberta Godward: Y
- b. Answer for Gail Franke: Y
- c. Answer for Wilma Mayes: Y
- d. Answer for Adele and Don Thorne: Y
- e. Answer for Alexis and William Chrisan: Y

QUESTION NO. 9:

If you answered "yes" in question 8 for any defendant, then answer question 9 for that plaintiff. Otherwise, do not answer question 9.

What sum of money, if any, in addition to actual damages, should be awarded to each plaintiff against Allstate Texas Lloyd's, Inc. because its conduct was committed knowingly?

Under Texas law, if the jury finds that the conduct of the defendant was committed knowingly, the consumer may recover damages for mental anguish, if any, arising from that conduct.

Answer in dollars and cents for damage, if any, that should be awarded because conduct was committed knowingly, and separately for damages that should be awarded for mental anguish, if any. Answer separately for each plaintiff.

a. Roberta Godward:

- i. Additional Damages: \$ 1,000
- ii. Damages for mental Anguish: \$ 10,000

b. Gail Franke:

- i. Additional Damages: \$ 0
- ii. Damages for mental Anguish: \$ 10,000

c. Wilma Mayes:

- i. Additional Damages: \$ 0
- ii. Damages for mental Anguish: \$ 10,000

d. Adele and Don Thorne:

- i. Additional Damages: \$ 0
- ii. Damages for mental Anguish: \$ 10,000

e. Alexis and William Chrisan:

- i. Additional Damages: \$ 0
- ii. Damages for mental Anguish: \$ 11,000

QUESTION NO. 10:

If you answered "yes" in question 2 for any defendant, then answer question 10 for that defendant. Otherwise, do not answer question 10.

On what date did Allstate receive all items, statements and forms required by Allstate to secure proof of loss from each Plaintiff for each Plaintiff's claim.

Please answer with the year, month, and date. Please answer separately for each plaintiff.

- a. Answer for Roberta Godward: 7/22/13
- b. Answer for Gail Franke: 12/9/13
- c. Answer for Wilma Mayes: 7/23/13
- d. Answer for Adele and Don Thorne: 12/9/13
- e. Answer for Alexis and William Chrisan: 12/9/13

QUESTION NO. 11:

If your answer to Question 2, Question 4, OR Question 6 is "Yes," then answer the following question. Otherwise, do not answer the following question.

Factors to consider in determining a reasonable fee include:

- 1.) The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
- 2.) The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
- 3.) The fee customarily charged in the locality for similar legal services.
- 4.) The amount involved and the results obtained.
- 5.) The time limitations imposed by the client or by the circumstances.
- 6.) The nature and length of the professional relationship with the client.
- 7.) The experience, reputation, and ability of the lawyer or lawyers performing the services.
- 8.) Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered

What is a reasonable fee for the necessary services of each Plaintiff's attorney, stated in dollars and cents?

Answer with an amount for each of the following:

a. Answer for Roberta Godward:

- i. \$ 7,500 for preparation and trial.
- ii. \$ 7,500 for an appeal to the Court of Appeals.
- iii. \$ 5,000 for an appeal to the Supreme Court of Texas.

b. Answer for Gail Franke:

- i. \$ 8,500 for preparation and trial.
- ii. \$ 7,500 for an appeal to the Court of Appeals.
- iii. \$ 5,000 for an appeal to the Supreme Court of Texas.

c. Answer for Wilma Mayes:

- i. \$ 7,500 for preparation and trial.
- ii. \$ 7,500 for an appeal to the Court of Appeals.
- iii. \$ 5,000 for an appeal to the Supreme Court of Texas.

d. Answer for Adele and Don Thorne:

- i. \$ 8,000 for preparation and trial.
- ii. \$ 7,500 for an appeal to the Court of Appeals.
- iii. \$ 5,000 for an appeal to the Supreme Court of Texas.

e. Answer for Alexis and William Chrisan:

- i. \$ 10,000 for preparation and trial.
- ii. \$ 7,500 for an appeal to the Court of Appeals.
- iii. \$ 5,000 for an appeal to the Supreme Court of Texas.

When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

Presiding Juror

The presiding juror has these duties:

- a. Read the complete charge aloud.
- b. Preside over your deliberations. This means the presiding juror will manage the discussions, and see that you follow the instructions.
- c. Give written questions or comments to the bailiff who will give them to the judge.
- d. Write down the answers you agree on.
- e. Get the signatures for the verdict certificate.
- f. Notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate

1. Unless otherwise instructed, you may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you cannot have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.
2. If 10 jurors agree on every answer, those 10 jurors sign the verdict.
If 11 jurors agree on every answer, those 11 jurors sign the verdict.
If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.

Judge Presiding

Verdict Certificate

Check one:

_____ Our verdict is unanimous. All twelve of us have agreed to each and every answer.
The presiding juror has signed the certificate for all 12 of us.

Signature of Presiding Juror

Printed name of Presiding Juror

_____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer
and have signed the certificate below.

_____ Our verdict is not unanimous. Ten of us have agreed to each and every answer
and have signed the certificate below.

SIGNATURE

NAME PRINTED

1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____