

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

RICHARD BALDWIN

Plaintiff,

v.

ATHENE ANNUITY AND LIFE
COMPANY, an Iowa corporation, a/k/a MLS
IOWA ATHENE, f/k/a AVIVA LIFE AND
ANNUITY,

Defendants.

CASE NO. CVCV054026

**PLAINTIFF'S PROPOSED JURY
INSTRUCTIONS**

Plaintiff Richard Baldwin ("Plaintiff") submits the attached proposed jury instructions.

/s/ Wesley T. Graham

William W. Graham AT0002953

Wesley T. Graham AT0011184

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ATTORNEYS FOR PLAINTIFF

Instruction No. 1

Members of the Jury:

In this case the Plaintiff, Richard Baldwin, brings the claims of malicious prosecution, intentional interference with prospective business advantage and identity theft against the Defendant.

Plaintiff brings the claims of malicious prosecution and intentional interference with prospective business advantage based on his assertion that Defendant reported Plaintiff's alleged fraud and termination for cause to the National Association of Insurance Commissioners, 20 state regulatory bodies, the Treasury Department's Financial Crimes Enforcement Network, and the Utah Insurance Fraud Division without having any good faith basis to do so.

Plaintiff brings the identity theft claim based on his assertion that Defendant fraudulently used Plaintiff's personal identification information without Plaintiff's authorization to do so, to Plaintiff's detriment and to Defendant's benefit.

Defendant denies the Plaintiff's claims.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

Authority

Iowa Civil Jury Instruction 100.1 (as modified)

Instruction No. 2

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

Authority

Iowa Civil Jury Instruction 100.2

Instruction No. 3

Whenever a party must prove something they must do so by the preponderance of the evidence. Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Authority

Iowa Civil Jury Instruction 100.3

Instruction No. 4

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Authority

Iowa Civil Jury Instruction 100.4

Instruction No. 5

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

Authority

Iowa Civil Jury Instruction 100.5

Instruction No. 6

During this trial, you have heard the word 'interrogatory'. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

Authority

Iowa Civil Jury Instruction 100.6

Instruction No. 7

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

Authority

Iowa Civil Jury Instruction 100.9

Instruction No. 8

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.

Authority

Iowa Civil Jury Instruction 100.12

Instruction No. 9

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges – judges of the facts. Your sole interest is to find the truth and do justice.

Authority

Iowa Civil Jury Instruction 100.18

Instruction No. 10

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges – judges of the facts. Your sole interest is to find the truth and do justice.

Authority

Iowa Civil Jury Instruction 100.18

Instruction No. 11

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

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

Authority

Iowa Civil Jury Instruction 100.21

Instruction No. 12

The Defendant in this case, Athene Annuity and Life Company, is a corporation. A corporation can only act through its officers, employees, and agents. Thus, 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 and if such act or omission is wrongful the corporation is liable for it.

Authority

Zimmer v. Travelers Ins. Co., 521 F.Supp.2d 910, 938 (S.D. Iowa 2007)

Instruction No. 13

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

It is important that we have your full and undivided attention during this trial.

Authority

Iowa Civil Jury Instruction 100.23

MALICIOUS PROSECUTION – IOWA

Instruction No. 14

"Malicious prosecution" means causing an unsuccessful criminal proceeding with malice and without probable cause.

To prove his claim of malicious prosecution, Plaintiff must prove all of the following propositions:

1. Plaintiff was prosecuted in a criminal proceeding in *State of Utah v. Richard Rex Baldwin*, Case No. 1319111851 (Third District Court of the State of Utah).
2. Defendant caused that prosecution.
3. The prosecution ended favorably for Plaintiff.
4. Defendant acted without probable cause.
5. Defendant acted with malice.
6. The prosecution was a cause of Plaintiff's damage.
7. The amount of damage.

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

Authority

Iowa Civil Jury Instruction 2200.1

Instruction No. 15

A person who does not personally file criminal charges may cause them to be started in one of two ways: (1) By convincing a third person, either a private person or a public prosecutor, to file the charge; or (2) By convincing a public official to file them.

A person does not cause a prosecution when the decision to file charges is left to the uncontrolled choice of another person.

When a person gives information to a prosecutor or official it believes to be true and the person receiving the information freely chooses to file charges based upon that information, the informer is not liable even though the information proves to be false and its belief was one that a reasonable person would not believe.

You may conclude a person caused the prosecution if that person caused the filing of charges by either giving information which it knew to be false to a prosecutor or public official or influenced the prosecutor or public official by direction, request or pressure of any kind so that the person's conduct was the determining factor in the decision to file the charges.

Authority

Iowa Civil Jury Instruction 2200.2

Instruction No. 16

Probable cause for filing a criminal charge means having a reasonable ground. Probable cause exists where the defendant knew enough about the facts and circumstances and had reasonable trustworthy information, including what someone else told it so that a reasonable person would believe that the plaintiff was guilty of the crime charged.

Probable cause does not require absolute certainty or proof beyond a reasonable doubt. It is to be determined by the factual and practical considerations of everyday life on which reasonable and careful persons act.

Authority

Iowa Civil Jury Instruction 2200.3

Instruction No. 17

An act is "malicious" when the main reason for the act was ill-will, hatred or other wrongful purpose. If you find Defendant's act was intentional and without probable cause or excuse, then you may conclude the act was done with ill-will, hatred or other wrongful purpose.

Authority

Iowa Civil Jury Instruction 2200.6

Instruction No. 18

The dismissal of the charge by the prosecuting attorney in the prior criminal case constitutes a favorable ending to the prosecution.

Authority

Iowa Civil Jury Instruction No. 2200.7

MALICIOUS PROSECUTION – UTAH

Instruction No. 19

In order to recover on his malicious prosecution claim, Plaintiff must prove all of the following propositions:

1. Defendant initiated or procured the initiation of criminal proceedings against Plaintiff;
2. Defendant did not have probable cause do to so;
3. Defendant initiated proceedings primarily for a purpose other than the procurement of justice;
4. The proceedings terminated in favor of the accused.

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

Authority

Hodges v. Gibson Prods. Co., 811 P.2d 151, 156 (Utah 1991).

Instruction No. 20

A party initiates a criminal proceeding if it was “actively instrumental in putting the law in force.”

Authority

Amica Mut. Ins. Co. v. Schettler, 768 P.2d 950, 959 (Utah Ct. App. 1989)
Restatement of the Law, Torts, § 653, cmts. b & g

Instruction No. 21

Probable cause exists when a person has a reasonable basis for believing the accusation and subjectively believes the accusation to be true at the time the accusation is made.

The accuser must have sufficient information based on an adequate investigation to justify the conclusion that there is probable cause to initiate a criminal proceeding.

Authority

Hodges v. Gibson Prod. Co., 811 P.2d 151, 158 (Utah 1991).

Instruction No. 22

Plaintiff must show that Defendant initiated the prosecution primarily for a purpose other than the procurement of justice. Plaintiff can show that Defendant did so if he shows any of the following: (1) Defendant did not believe in the guilt of Plaintiff; (2) the prosecution was initiated primarily because of hostility or ill will toward Plaintiff; or (3) the prosecution was initiated for obtaining a private advantage.

Authority

Neff v. Neff, 247 P.3d 380, 394 (Utah 2011)
Restatement (Second) of Torts §668 (1977)

**INTENTIONAL INTERFERENCE WITH
PROSPECTIVE BUSINESS ADVANTAGE –
IOWA**

Instruction No. 23

Plaintiff claims that Defendant improperly interfered with his prospective business relationships. In order to prove this claim, Plaintiff must prove all of the following propositions:

1. Plaintiff had prospective business relationships with a class of third parties that included, but was not limited to, other independent agents and their clients, as well as with other insurance carriers.
2. Defendant knew of the prospective relationships.
3. Defendant intentionally and improperly interfered with the relationships by reporting Plaintiff's alleged fraud and termination for cause to the National Association of Insurance Commissioners.
4. a. The interference caused the third parties not to enter or to continue the relationship; or
b. The interference prevented Plaintiff from entering into or continuing the relationships.
5. The nature and amount of damage.

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

Authority

Iowa Civil Jury Instruction 1200.2 (modified)
Hagen v. Siouxland Obstetrics & Gynecology, P.C., 934 F. Supp. 2d 1026, 1049-50 (N.D. Iowa
2013)

Instruction No. 24

A defendant's interference with a prospective business relationship is intentional if the defendant either interferes with the prospective business relationship on purpose or knows the conduct is substantially certain to interfere with the prospective business relationship.

Authority

Iowa Civil Jury Instruction 1200.6

Instruction No. 25

“Prospective business relationship” means a reasonably likely business relationship of financial benefit to the plaintiff.

Authority

Iowa Civil Jury Instruction 1200.7

Instruction No. 26

A defendant's interference with a prospective business relationship is improper if the defendant's interference is done with the predominant purpose of financially harming or destroying the plaintiff's business.

Authority

Iowa Civil Jury Instruction 1200.8

**INTENTIONAL INTERFERENCE WITH
PROSPECTIVE BUSINESS ADVANTAGE –
UTAH**

Instruction No. 27

Plaintiff claims that Defendant intentionally interfered with Plaintiff's economic relations. To award damages for this claim, Plaintiff must prove:

1. That Defendant intentionally interfered with an existing or potential economic relationship that Plaintiff had;
2. That Defendant did so by improper means;
3. That Defendant's interference caused harm to Plaintiff.

Authority

Model Utah Jury Instruction No. CV1401 (2d ed. 2019)

Instruction No. 28

An economic relationship exists when Plaintiff has a reasonable expectation of economic benefit from his relationship with one or more third parties or an identifiable class of third parties. This expectation must be present at the time of the interference.

An economic relationship can be based upon an existing contract but does not have to be. It is enough if you find that there were either dealings or a course of conduct between Plaintiff and third parties or a class of third parties from which Plaintiff had a reasonable expectation of economic benefit. The expected benefit must be likely to occur but does not have to be a certainty.

Authority

Model Utah Jury Instruction No. CV1402 (2d ed. 2019)
Proctor & Gamble Co. v. Hogan, 947 F. Supp. 1551, 1556 (D. Utah 1996).

Instruction No. 29

You must next determine whether Defendant intentionally interfered with Plaintiff's existing or potential economic relationship. For Defendant to have intentionally interfered with an existing or potential economic relationship of Plaintiff, Defendant must have:

1. acted for the purpose of interfering with that relationship; or
2. acted knowing that the interference was substantially certain to occur as a result of its actions.

Authority

Model Utah Jury Instruction No. CV1403 (2d ed. 2019)

Instruction No. 30

The second element of Plaintiff's claim is that Defendant interfered with Plaintiff's existing or potential economic relations by improper means. "Improper means" is defined as action that was contrary to law or violated an established standard of a trade or profession. If you find that Defendant did not have a good faith basis for reporting Plaintiff for fraud to the National Association of Insurance Commissioners and the Financial Crime Enforcement Network, then Plaintiff has established "improper means".

Authority

Model Utah Jury Instruction No. CV1404 (2d ed. 2019), as modified.

Instruction No. 31

Defendant claims that its actions in interfering with Plaintiff's economic relations were privileged. Defendant claims that its conduct was privileged because it was statutorily required to report that termination to the Utah Department of Insurance. Defendant's reporting of Plaintiff is only privileged if you find that the reporting was done in good faith. To the extent you find Defendant's actions were subject to a privilege, you cannot find those actions to be an "improper means."

Authority

Model Utah Jury Instruction No. CV1405 (2d ed. 2019) as modified.

Instruction No. 32

If you find that Defendant intentionally interfered with Plaintiff's economic relations, then you should award Plaintiff damages that will reasonably compensate for any harm Plaintiff has suffered because of the interference with economic relations.

Authority

Model Utah Jury Instruction No. CV1406 (2d ed. 2019)

IDENTITY THEFT

Instruction No. 33

To recover on his claim of identity theft, Plaintiff must prove all of the following propositions:

1. Defendant obtained identification information of Plaintiff;
2. Defendant fraudulently used or attempted to fraudulently use identification information of Plaintiff;
3. With the intent to obtain credit, property, services, or other benefit;
4. Plaintiff suffered a pecuniary loss as a result of the use of his identification information; and
5. The amount of damage.

Authority

Iowa Code §§ 715A.8, 714.16B (2019)

Instruction No. 34

“Identification information” as used in Instruction No. 32 includes but is not limited to the name, address, date of birth, telephone number, driver's license number, nonoperator's identification card number, social security number, student identification number, military identification number, alien identification or citizenship status number, employer identification number, signature, electronic mail signature, electronic identifier or screen name, biometric identifier, genetic identification information, access device, logo, symbol, trademark, place of employment, employee identification number, parent's legal surname prior to marriage, demand deposit account number, savings or checking account number, or credit card number of a person.

Authority

Iowa Code § 715A.8 (2019)

Instruction No. 35

“Fraudulently used” or “fraudulently attempted to use” as used in Instruction No. 32 means to use identification information knowing that its use was illegitimate.

Authority

Iowa Code §§ 715A.8, 714.16B (2019)
State v. Garcia, 788 N.W.2d 1, 3 (Iowa Ct. App. 2010)

Instruction No. 36

If you find that Plaintiff is entitled to recover on his identify theft claim, then you should award Plaintiff the greater of three times his actual damages or five thousand dollars.

Authority

Iowa Code § 714.16B (2019)

PUNITIVE DAMAGES

Instruction No. 37

Punitive damages are available to Plaintiff on all three of his claims – malicious prosecution, tortious interference with prospective business advantage, and identity theft. Therefore, if you find for Plaintiff on any of these claims, you need to assess whether to award Plaintiff punitive damages on such claim.

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

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

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

Authority

Iowa Civil Jury Instruction 210.1

Instruction No. 38

Defendant is liable for the punitive damages by reason of the acts of its employee or agent if one of the following occurred:

1. Defendant or its managerial agent authorized the act and the way it was done; or
2. The agent or employee was employed in a managerial capacity and was acting in the scope of employment; or
3. Defendant or its managerial agent ratified or approved the act.

Authority

Iowa Civil Jury Instruction 210.3 (modified)

Instruction No. 39

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.

Authority

Iowa Civil Jury Instruction 210.4

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

RICHARD BALDWIN

Plaintiff,

v.

ATHENE ANNUITY AND LIFE
COMPANY, an Iowa corporation, a/k/a MLS
IOWA ATHENE, f/k/a AVIVA LIFE AND
ANNUITY,

Defendants.

CASE NO. CVCV054026

VERDICT FORM

VERDICT NO. 1

On Plaintiff's claim of Malicious Prosecution, we, the Jury, find in favor of the plaintiff and fix the amount of his recovery against the defendant at _____ dollars.

FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the jurors agreeing thereto after six hours or more of deliberation.

VERDICT NO. 2

On Plaintiff's claim of Interference with Prospective Business Relationships, we, the Jury, find in favor of the plaintiff and fix the amount of his recovery against the defendant at _____ dollars.

FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the jurors agreeing thereto after six hours or more of deliberation.

VERDICT NO. 3

On Plaintiff's claim of Identity Theft, we, the Jury, find in favor of the plaintiff and fix the amount of his recovery against the defendant at _____ dollars.

FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the jurors agreeing thereto after six hours or more of deliberation.

VERDICT NO. 4

Special Questions - Punitive Damages.

Question No. 1: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of the defendant constituted willful and wanton disregard for the rights or safety of another?

Answer "Yes" or "No"

ANSWER:

[If your answer to Question No. 1 is "No" do not answer Question Nos. 2 and 3]

Question No. 2: What amount of punitive damages, if any, do you award?

ANSWER:

[If your answer to Question No. 2 is "None" do not answer Question No. 3]

Question No. 3: Was the conduct of the defendant directed specifically at the Plaintiff?

Answer "Yes" or "No"

ANSWER:

FOREMAN OR FOREWOMAN*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the jurors agreeing thereto after six hours or more of deliberation.