

Case No.: 07-CI-001873

JEFFERSON CIRCUIT COURT

DIVISION EIGHT (8)

DEBORAH DANIELS

PLAINTIFF

v.

INSTRUCTIONS

AMERICAN PHYSICIANS
ASSURANCE CORPORATION

DEFENDANT

* * * * *

Nine (9) or more of you must agree as to any verdict you reach in this case. However, the nine (9) or more of you who agree as to any one verdict need not be the same nine (9) or more of you who agree as to any other verdict. Any verdict that is not unanimous must be signed by the nine (9) or more of you who are in agreement. Any verdict that is unanimous need only be signed by the Foreperson.

Please proceed to Instruction No. 1

INSTRUCTION NO. 1

Please answer the following:

QUESTION NO. 1

Are you satisfied from the evidence that **American Physicians Assurance Corporation** delayed the settlement of **Deborah Daniels'** claim against Dr. Grimes?

YES NO

Michael Wilson
FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If you have answered "YES", please proceed to Question No. 2.

If you have answered "NO", your deliberations are at an end with respect to Instruction No. 1. Please proceed to Instruction No. 2.

QUESTION NO. 2

Are you satisfied from the evidence that **American Physicians Assurance Corporation** lacked a reasonable basis for delaying the settlement of **Deborah Daniels'** claim against Dr. Grimes?

YES NO

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

<u>Michael Wilson</u>	<u>Gene Lyons</u>
<u>Jeff Propp</u>	<u>Tiffany Greening</u>
<u>Robin Hoenback</u>	<u>Yukie Jant</u>
<u>Margaret Martin</u>	<u>Uebie Johnson</u>
<u>Kelly R. Duffy</u>	<u>Chickie Dwyer</u>
	<u>Alton D. Brown</u>

If you have answered "YES" to Question No. 2, please proceed to Question No. 3.

If you have answered "NO" to Question No. 2, your deliberations are at an end with respect to Instruction No. 1. Please proceed to Instruction No. 2.

QUESTION NO. 3

Are you satisfied from the evidence that **American Physicians Assurance Corporation** either knew that there was no reasonable basis for the delay in settling **Deborah Daniels'** claim against Dr. Grimes **OR** acted in reckless disregard for whether or not such a basis existed?

YES **NO**

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

Michael Wilson
Robin Hornback
Mary K. Martin
Kelly R. Duffy
Jane Shepard

William Greening
Vicky Janat
Clark W. Dwyer
Allen D. Brown

If you have answered "YES" to Question No. 3, please proceed to Question No. 4.

If you have answered "NO" to Question No. 3, your deliberations are at an end with respect to to Instruction No. 1. Please proceed to Instruction No.2

QUESTION NO. 4

Are you satisfied from the evidence that **Deborah Daniels** has been damaged and that **American Physicians Assurance Corporation's** delay in settling her claim against Dr. Grimes was a substantial factor in causing that damage?

YES NO

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

<u>Michael Wilson</u>	<u>Gene Leonard</u>
<u>Jazz D. Dyer</u>	<u>Nicky J. Jant</u>
<u>Robin Hornback</u>	<u>Curtis D. Dyer</u>
<u>Maneyo K. Martin</u>	<u>Wanda D. Brown</u>
<u>Tiffany Greene</u>	

Your deliberations are at and end with respect to Instruction No. 1.

Please proceed to Instruction No. 2.

INSTRUCTION NO. 2

Please answer the following:

QUESTION NO.1

Are you satisfied from the evidence that **American Physicians Assurance Corporation** misrepresented pertinent facts or insurance policy provisions relating to the coverage at issue with respect to **Deborah Daniels'** claim against Dr. Grimes?

YES NO

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

<u>Michael Wilson</u>	<u>Aure Lagana</u>
<u>Jay Draper</u>	<u>Tiffany Greeny</u>
<u>Rubin Hornback</u>	<u>Vicky Howard</u>
<u>Margaret K. Martin</u>	<u>Mark Williams</u>
<u>Kelly R. Duffy</u>	<u>Alison Brown</u>

If you have answered "YES" to Question No. 1, please proceed to Question No. 2.

If you have answered "NO" to Question No. 1, your deliberations are at an end with respect to Instruction No. 2. Please proceed to Instruction No. 3.

QUESTION NO. 2

Are you satisfied from the evidence that **American Physicians Assurance Corporation** lacked a reasonable basis for misrepresenting pertinent facts or insurance policy provisions relating to the coverage at issue with respect to **Deborah Daniels'** claim against Dr. Grimes?

YES **NO**

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

<u>Michael Wilson</u>	<u>Ane Lagunas</u>
<u>Jeff Prosser</u>	<u>William Greenup</u>
<u>Robin Horuback</u>	<u>Shirley J. Janssen</u>
<u>Marjorie K. Madala</u>	<u>Clifford A. Perry</u>
<u>Kelly R. Duffy</u>	<u>Stuart Brown</u>

If you have answered "YES" to Question No. 2, please proceed to Question No. 3.

If you have answered "NO" to Question No. 2, your deliberations are at an end with respect to Instruction No. 2. Please proceed to Instruction No. 3.

QUESTION NO. 3

Are you satisfied from the evidence that **American Physicians Assurance Corporation** either knew that there was no reasonable basis for misrepresenting pertinent facts or insurance policy provisions relating to the coverage at issue with respect to **Deborah Daniels'** claim against Dr. Grimes **OR** acted in reckless disregard for whether or not such a basis existed?

 ✓ YES NO

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

<u>Michael Wilson</u>	<u>Tiffany Greenup</u>
<u>Robin Hornback</u>	<u>Wiley Tamm</u>
<u>Manuella K. Martin</u>	<u>Jill A. Murray</u>
<u>Kelly R. Daffy</u>	<u>Michael Brown</u>
<u>Gene Reynolds</u>	

If you have answered "YES" to Question No. 3, please proceed to Question No. 4.

If you have answered "NO" to Question No. 3, your deliberations are at an end with respect to Instruction No. 2. Please proceed to Instruction No. 3.

QUESTION NO. 4

Are you satisfied from the evidence that **Deborah Daniels** has been damaged and that **American Physicians Assurance Corporation** misrepresentation of pertinent facts or insurance policy provisions relating to the coverage at issue with respect to her claim against Dr. Grimes was a substantial factor in causing that damage?

_____ YES ✓ NO

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

<u>Michael Wilson</u>	<u>Gene Higgins</u>
<u>Jeff Draper</u>	<u>Debbie Johnson</u>
<u>Mano K. Maudis</u>	<u>Craig K. Anderson</u>
<u>Kelly R. Driff</u>	<u>Steven D. Brown</u>
<u>Steve [unclear]</u>	

Your deliberations are at and end with respect to Instruction No. 2.

Please proceed to Instruction No. 3.

INSTRUCTION NO. 3

Please answer the following:

QUESTION NO. 1

Are you satisfied from the evidence that **American Physicians Assurance Corporation** failed to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies?

YES NO

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

Michael Wilson
Jeff Draper
Robin Hoenback
Maura Martin
Kelly R. Duffy

Ane Lagomo
Tiffany Green
Lucky Hamed
Debbie Johnson
Chick Cartman
Steven D. Brown

If you have answered "YES" to Question No. 1, please proceed to Question No. 2.

If you have answered "NO" to Question No. 1, your deliberations are at an end with respect to Instruction No. 3. Please proceed to Instruction No. 4.

QUESTION NO. 2

Are you satisfied from the evidence that **American Physicians Assurance Corporation** lacked a reasonable basis for failing to adopt and implement standards for the prompt investigation of claims arising under insurance policies?

✓ YES _____ NO

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

Michael Wilson
Jeff Papp
Robin Hoenback
Maryann K. Maides
Kelly R. Duffy

Sara Stagnaro
Tiffany Greenup
Shirley J. Ford
Lettie Johnson
Cheryl Rayson
David Beason

If you have answered "YES" to Question No. 2, please proceed to Question No. 3.

If you have answered "NO" to Question No. 2, your deliberations are at an end with respect to Instruction No. 3. Please proceed to Instruction No. 4.

QUESTION NO. 3

Are you satisfied from the evidence that **American Physicians Assurance Corporation** either knew that there was no reasonable basis for failing to adopt and implement standards for the prompt investigation of claims arising under insurance policies **OR** acted in reckless disregard for whether or not such a basis existed?

YES **NO**

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

Michael Wilson
Robin Holmback
Maurice J. K. Martin
Kelly R. Duff
Tiffany Greene

Theresa Tavel
Dethi Johnson
Dick deAuser
Maurice Brown

If you have answered "YES" to Question No. 3, please proceed to Question No. 4.

If you have answered "NO" to Question No. 3, your deliberations are at an end with respect to Instruction No. 3. Please proceed to Instruction No. 4.

QUESTION NO. 4

Are you satisfied from the evidence that **Deborah Daniels** has been damaged and that **American Physicians Assurance Corporation's** failure to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies was a substantial factor in causing that damage?

YES NO

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

<u>Michael Wilson</u>	<u>Gene Haygood</u>
<u>Jeff Draeger</u>	<u>Tiffany Greening</u>
<u>Robin Hornback</u>	<u>Tracy J. ...</u>
<u>Manuel K. ...</u>	<u>Chuck ...</u>
<u>Kelley R. Duffy</u>	<u>Howard ...</u>

Your deliberations are at and end with respect to Instruction No. 3.

Please proceed to Instruction No. 4.

INSTRUCTION NO. 4

Please answer the following:

QUESTION NO. 1

Are you satisfied from the evidence that **American Physician Assurance Corporation** did not attempt, in good faith, to effectuate a prompt, fair and equitable settlement of **Deborah Daniels'** insurance claim against Dr. Grimes if and when liability had become reasonably clear as that term is defined below?

Liability becomes "reasonably clear" when, with knowledge of the relevant facts and law at issue, a reasonable person would have concluded, for good reason, that Dr. Grimes's care had fallen below the applicable standard of care and had caused **Deborah Daniels'** injuries.

YES NO

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

Michael Wilson
Jeff Dyer
Robin Hornback
Margaret K. MacQuinn
Kelly R. Duffy

Gene Higgins
Tiffany Greening
Teresa Faust
Debra Johnson
Dil K. Kulkarni
Steven L. Brown

If you have answered "YES" to Question No. 1, please proceed to Question No. 2.

If you have answered "NO" to Question No. 1, your deliberations are at an end with respect to Instruction No. 4. Please proceed to Instruction No. 5.

QUESTION NO. 2

Are you satisfied from the evidence that **American Physicians Assurance Corporation** lacked a reasonable basis for not attempting in good faith to effectuate a prompt, fair and equitable settlement of **Deborah Daniels'** insurance claim against Dr. Grimes when liability had become reasonably clear as that term is defined above in Question No.1?

YES NO

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

<u>Michael Wilson</u>	<u>Gene Flayno</u>
<u>Jeff Dwyer</u>	<u>Tiffany Green</u>
<u>Ron Hornback</u>	<u>Wesley Vancat</u>
<u>Manana K. Martin</u>	<u>Carl Chapman</u>
<u>Kelley R. Duffy</u>	<u>Michael Brown</u>

If you have answered "YES" to Question No. 2, please proceed to Question No. 3.

If you have answered "NO" to Question No. 2, your deliberations are at an end with respect to Instruction No. 4. Please proceed to Instruction No. 5.

QUESTION NO. 3

Are you satisfied from the evidence that **American Physicians Assurance Corporation** either knew that there was no reasonable basis for not attempting, in good faith, to effectuate a prompt, fair and equitable settlement of **Deborah Daniels'** insurance claim against Dr. Grimes when liability had become reasonably clear as defined above in Question No. 1 **OR** acted in reckless disregard for whether or not such a basis existed?

YES **NO**

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

<u>Michael Wilson</u>	<u>Jane Zagomo</u>
<u>Jeff D... ..</u>	<u>Tiffany Green</u>
<u>Robin Hornback</u>	<u>Tracy</u>
<u>Margaret K.</u>	<u>Dick</u>
<u>Kelly R. Duffy</u>	<u>Alfred</u>

If you have answered "YES" to Question No. 3, please proceed to Question No. 4.

If you have answered "NO" to Question No. 3, your deliberations are at an end with respect to Instruction No. 4. Please proceed to Instruction No. 5.

QUESTION NO. 4

Are you satisfied from the evidence that **Deborah Daniels** has been damaged and that **American Physician Assurance Corporation's** failure to attempt, in good faith, to effectuate a prompt, fair and equitable settlement of her insurance claim against Dr. Grimes when liability had become reasonably clear was a substantial factor in causing that damage?

YES NO

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

<u>Michael Wilson</u>	<u>Gene Loggins</u>
<u>Jeff Thomas</u>	<u>Tiffany Greening</u>
<u>Robin Henback</u>	<u>Lucy Faust</u>
<u>Margaret K. Kautz</u>	<u>Debbie Johnson</u>
<u>Kelly R. Duffy</u>	<u>Chad DePina</u>
	<u>Michael Brown</u>

Your deliberations are at and end with respect to Instruction No. 4.

Please proceed to Instruction No. 5.

INSTRUCTION NO. 5

If you have answered "YES" to Questions 1, 2, 3 and 4 under Instruction No. 1 and/or Instruction No. 2, and/or Instruction No. 3 and/or Instruction No. 4, you must now determine from the evidence and award **Deborah Daniels** the sum or sums of money that will reasonably compensate her for the following:

- (1) The difference between the amount of a fair and equitable settlement with **American Physicians Assurance Corporation** for **Deborah Daniels'** claim against Dr. Grimes and the amount of the actual settlement (\$650,000).

\$ 205,000
(NOTE: Not to exceed \$350,000)

- (2) Any and all mental anguish **Deborah Daniels** may have suffered as a direct result of the conduct of **American Physicians Assurance Corporation**.

\$ 145,000
(NOTE: Not to exceed \$5,000,000)

FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

Michael Wilson
Garry D. [unclear]
Robin Hornback
Marilyn K. Martin
Kelly R. Duff

Gene Steyer
Tiffany Green
Willy Faust
Dennis John
Dick [unclear]
Steven L. Brown

Please proceed to Instruction No. 6.

INSTRUCTION NO. 6

"Punitive damages" are damages awarded for the purpose of punishing **American Physicians Assurance Corporation** for its misconduct in this case and discouraging it and others from engaging in similar conduct in the future. If you have awarded damages under Instruction No. 5, you may, in your discretion, award punitive damages against **American Physicians Assurance Corporation** in addition to the damages awarded under Instruction No. 5.

If you award punitive damages, in determining the amount thereof, you should consider the following factors:

- (1) The harm to **Deborah Daniels** as measured by the damages you have awarded under Instruction No. 5 caused by **American Physician Assurance Corporations'** failure to comply with its duties.
- (2) The degree, if any, to which you find from the evidence that **American Physician Assurance Corporations'** conduct toward **Deborah Daniels** was reprehensible, considering:
 - (a) the degree to which the harm to **Deborah Daniels** was the result of the intentional malice, trickery or deceit, or mere accident;
 - (b) the degree to which the conduct involved repeated actions as opposed to an isolated incident;
 - (c) the likelihood at the time of such misconduct that serious harm would arise from it;

- (d) the degree of **American Physicians Assurance Corporations'** awareness of that likelihood;
- (e) the duration of the misconduct by and any concealment of it by **American Physicians Assurance Corporation;**
- (f) the actions by **American Physicians Assurance Corporation** to remedy the misconduct once it became known to it;
- (g) the profitability of the misconduct to **American Physicians Assurance Corporation;**
- (h) the degree to which the harm was economic as opposed to physical;
- (i) the degree to which **Deborah Daniels** had financial vulnerability.

If you award punitive damages, they must be fixed with calm discretion and sound reason and must never be either awarded or fixed in amount, because of any sympathy, or bias, or prejudice with respect to any party to the case.

If you award punitive damages, you will state the amount separately from the sum or sums awarded under Instruction No. 5.

Please proceed to Question No. 1.

QUESTION NO. 1

Are you satisfied by clear and convincing evidence that punitive damages should be imposed against **American Physicians Assurance Corporation**?

YES
\$ 3,479,270
(NOTE: Not to exceed \$60,000,000)
 NO

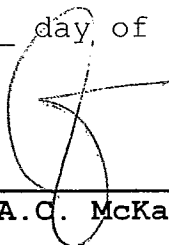
FOREPERSON (if unanimous)

JURORS IN AGREEMENT (if not unanimous):

<u>Michael Wilson</u>	<u>Tiffany Greening</u>
<u>Jeff Draper</u>	<u>Wiley Jant</u>
<u>Robin Hornback</u>	<u>Mark A. Purdy</u>
<u>Marion K. Madis</u>	<u>Alfred Brown</u>
<u>Kelly R. Duffy</u>	

Please notify the Sheriff that your deliberations are at an end.

SO ORDERED this 200 day of June, 2009.



A.C. McKay Chauvin, Judge