2014 WL 5877202 (Conn.Super.) (Jury Instruction)
Superior Court of Connecticut.
Hartford County

C. Andrew RILEY,

v.

THE TRAVELERS HOME AND MARINE INSURANCE COMPANY.

No. HHDCV116025680.
June 6, 2014.

Plaintiff's Preliminary Requests to Charge

The Plaintiff, Andrew Riley, 305944 L. Isaac, Leonard M. Isaac, for: Isaac Law Offices, LLC, 100 Grand Street, Suite 2H, Waterbury, CT 06702, Juris No. 433117, Telephone (203) 528-4317, Facsimile (203) 437-8153, His Attorneys.

The plaintiff requests the court to charge the jury in the following manner:

1. *CONTRACT OF INSURANCE*

The plaintiff has made various claims related to a Homeowners Insurance Policy issued by the defendant. An insurance policy is a contract that is construed to effectuate the intent of the parties as expressed by their words and purposes.

Authority: Metropolitan Life Ins. Co. v. Aetna Cas. and Sur. Co., 255 Conn. 295, 305, 765 A. 2d 891, 896 (2009) (citation omitted).

> Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms.

Authority: RBC Nice Bearings, Inc. v. SKF USA, Inc., 146 Conn. App. 288, 299, 78 A. 3d 195, 203 (2013) (citation omitted).

2. *SPOLIATION OF EVIDENCE*

Ladies and gentlemen, I will explain to you a rule that applies if a party destroys evidence. Parties to a pending or impending case have a legal duty to preserve relevant evidence. Under our law, intentional destruction of evidence should be condemned because destroying evidence can destroy fairness and justice, can increase the risk of an erroneous decision on the merits of the underlying cause of action, and can increase the costs of litigation as parties attempt to reconstruct the destroyed evidence or to develop other evidence, which may be less accessible, less persuasive, or both.
Destruction of evidence is called spoliation. You may draw an inference from the intentional spoliation of evidence that the destroyed evidence would have been unfavorable to the party that destroyed it.

To be entitled to this inference, the victim of spoliation must prove that: (1) the spoliation was intentional, in the sense that it was purposeful, and not inadvertent; (2) the destroyed evidence was relevant to the issue or matter for which the party seeks the inference; and (3) he or she acted with due diligence with respect to the spoliated evidence.

The adverse inference is permissive and not mandatory. If you find that Travelers materially changed the fire scene at the Riley family home by cutting, dismantling and removing significant portions of the electrical system, thereby depriving the plaintiff of a fair opportunity to conduct his own inspections of the electrical system as it existed in place and its role in the fire, and if you find that such evidence was relevant, and that the plaintiff was acting with due diligence with respect to the spoliated evidence, then you may infer that the evidence of the electrical system as it existed in place would have been unfavorable to Travelers.

Authority: *Rizzuto v. Davidson Ladders, inc.,* 280 Conn. 225, 237, 905 A. 2d 1165, 1174-5(2006).

3. *CREDIBILITY OF WITNESSES*

The credibility of witnesses and the weight to be given to their testimony are matters for you as jurors to determine. However, there are some principles that you should keep in mind. No fact is, of course, to be determined merely by the number of witnesses who testify for or against it; it is the quality and not the quantity of testimony that controls. In weighing the testimony of each witness you should consider the witness's appearance on the stand and whether the witness has an interest of whatever sort in the outcome of the trial. You should consider a witness's opportunity and ability to observe facts correctly and to remember them truly and accurately, and you should test the evidence each witness gives you by your own knowledge of human nature and the motives that influence and control human actions. You may consider the reasonableness of what the witness says and the consistency or inconsistency of (his/her) testimony. You may consider (his/her) testimony in relation to facts that you find to have been otherwise proven. You may believe all of what a witness tells you, some of what a witness tells you, or none of what a particular witness tells you. You need not believe any particular number of witnesses and you may reject uncontradicted testimony if you find it reasonable to do so. In short, you are to apply the same considerations and use the same sound judgment and common sense that you use for questions of truth and veracity in your daily life.

Authority: State of Connecticut Civil Jury Instructions, Instruction No. 2.5-1 Credibility of Witnesses.

4. *EXPERT WITNESS*

Several witnesses for both the plaintiff and the defendant have testified and stated to you, not merely what they knew, but also what their opinions were as to certain circumstances. Such witnesses are sometimes referred to as “expert” witnesses. In this case these witnesses were Fire Marshal Adam Scheuritzel and Ron Mullen. It is for you to consider the testimony of these witnesses together with the other circumstances in the case, and, using your best judgment, determine whether or not you will give any weight to it, and if so, what weight you will give to it. Now, in weighing and considering the testimony of an expert witness, in determining to what extent you will attach weight to his or her opinion, you ought to apply the same rules that you would apply to any witness, insofar as it relates to the interest, bias or prejudice, appearance and demeanor upon the witness stand, frankness and candor, and so forth. You are to determine whether the witness is possessed of peculiar and exclusive knowledge and experience in his or her specialized field. The value to be attached to the witness' testimony, and the weight to be accorded it, will of course depend upon many other things; upon the actual skill possessed by the expert, by the experience the expert has had, and the training the expert has had.

Those are matters to which you are to give such consideration as your own good judgment suggests. And finally, as the witness testifies before you, you may consider whether he or she produces before you a rational and reasonable basis in support of his or her opinions; as the witness testifies, you may consider whether the mode of testifying indicates care, skill, intelligence and candor.

Authority: Wright, *Connecticut Jury Instructions,* 3d Edition §§ 324, 325.

5. *EVIDENCE ADMITTED BY LAW*

The plaintiff has introduced certain documents into evidence by authority of state law. For example, the plaintiff has introduced medical records from various medical care providers. Our law allows the plaintiff to do so without bringing someone from the hospitals or the doctors in to testify. There is nothing wrong with doing that. The law recognizes that it serves the public better to allow certain kinds of documents into evidence without bringing in a witness to introduce them. The plaintiff was not required to call as witnesses all the doctors who wrote the medical notes or reports, and you should not hold it against the plaintiff that he did not do so.

Authority: Conn. Gen Stat. §§ 4-104, 52-180; Tait and LaPlante, *Handbook of Connecticut Evidence,* (2d Ed. §§ 10-5, 11-15).

6. *BURDEN OF PROOF*

The party making a claim has the burden of proof with respect to that claim. Thus, the plaintiff has the burden of proving each essential element of the cause of action upon which the plaintiff relies. I will review those elements with you in a moment.

Authority: *Mankert v. Elmatco Products, Inc.,* 84 conn. App. 456, 463-64, cert. denied, 271 Conn. App. 519, 523, cert. denied, 224 Conn. 923 (1992). From State of Connecticut Civil Jury Instructions, Instruction No. 2.6-1 Burden of Proof- Claims.

> The defendant does not have to present evidence to disprove the plaintiff's claim. However, the defendant in this case has also pleaded what are known as "special defenses," alleging that the plaintiff is not entitled to insurance coverage for the fire to his home because of certain exclusions in the insurance policy. The defendant has the burden of proof with respect to these special defenses. It is Travelers' burden, therefore, to prove its claim that Mr. Riley intentionally caused the fire in his home, that he concealed or misrepresented material facts and circumstances concerning the loss, and that he made material false statements.

Authority: *Lancia v. State National Ins. Co.,* 134 Conn. App. 682, 690, 41 A. 3d 308, cert. denied, 305 Conn. 904, 44 A. 3d 181 (2012).

7. *STANDARD OF PROOF*

In order to meet his burden of proof, a party must satisfy you that his claims on an issue are more probable than not. You may have heard in criminal cases that proof must be beyond a reasonable doubt, but I must emphasize to you that this is not a criminal case, and you are not deciding criminal guilt or innocence. In civil cases such as this one, a different standard of proof applies. The party who asserts a claim has the burden of proving it by a fair preponderance of the evidence, that is, the better or weightier evidence must establish that, more probably than not, the assertion is true. In weighing the evidence, keep in mind that it is the quality and not the quantity of evidence that is important; one piece of believable evidence may weigh so heavily in your mind as to overcome a multitude of less credible evidence. The weight to be accorded each piece of evidence is for you to decide.
As an example of what I mean, imagine in your mind the scales of justice. Put all the credible evidence on the scales regardless of which party offered it, separating the evidence favoring each side. If the scales remain even, or if they tip against the party making the claim, then that party has failed to establish that assertion. Only if the scales incline, even slightly, in favor of the assertion may you find the assertion has been proved by a fair preponderance of the evidence.

Authority: *Tianti v. William Raveis Real Estate, Inc.,* 231 Conn. 690, 702 (1995); *Holmes v. Holmes,* 32 Conn. App. 317, 318, cert. denied, 228 Conn. 902 (1993). From State of Connecticut Civil Jury Instructions, Instruction No. 3.2-1 Standard of Proof.

8. *AGENCY LIABILITY (RESPONDEAT SUPERIOR)*

The defendant may be directly liable for the acts of its agents that it authorizes or ratifies.

Authority: W. Prosser & W. Keeton, Torts (5th Ed.1984) § 70, p. 502. A principal may be directly liable, however, for the acts of its agents that it authorizes or ratifies. Id., pp. 501-502; 1 Restatement (Second), supra, *§212* (principal liable for authorized conduct) and *§ 218* (principal liable for ratified conduct). *Larsen Chelsey Realty Co. v. Larsen,* 232 Conn. 480, 505, 656 A. 2d 1009, 1023 (1995).

9. *BREACH OF CONTRACT*

The plaintiff alleges two different types of legal claims in this case, the first is breach of contract, and the second is negligent infliction of emotional distress. I will address each claim, and the damages associated with it, in turn. The plaintiff alleges that the defendant breached its obligations under a Homeowners Insurance Policy the defendant issued to the plaintiff. In order to recover on a breach of contract claim, the plaintiff must prove:
1. the formation of an insurance contract with the defendant;

2. that the plaintiff performed his obligations under the insurance contract;

3. that the defendant failed to perform its obligations under the insurance contract; and

4. as a result, the plaintiff sustained damages.

The plaintiff alleges he had a Homeowners Insurance Policy with Travelers that protected his family against loss or damage by fire. The plaintiff further alleges that he and his family fulfilled all terms, conditions and requirements of the insurance policy that they were obliged to perform. The plaintiff alleges that the defendant breached its obligations under the insurance policy by failing to pay Andrew Riley for damages that he was entitled to recover under the insurance policy, by falsely accusing the plaintiff of intentionally setting the fire and of concealing or misrepresenting materials facts and circumstances concerning the loss, by refusing to share the basis for its claim that the plaintiff intentionally caused the fire or concealed or misrepresented material facts or made “material false statements”, and by refusing to divulge any aspect of the investigation it conducted, thereby preventing the plaintiff or his representatives from correcting the errors or misunderstanding in that investigation. The plaintiff alleges that he has been damaged as a direct and proximate result of Travelers' actions.

Authority: *Keller v. Beckenstein,* 117 Conn. App. 550, cert. denied, 294 Conn. 913 (2009). From State of Connecticut Civil Jury Instructions, Instruction No. 4.1-15 Breach of Contract.

10. *DAMAGES - BREACH OF CONTRACT*

If you find that the defendant is liable to the plaintiff for the breach of contract cause of action, then you must determine the amount of money to award to the plaintiff as contract damages. The following instructions tell you how to do that. If you find that the defendant is not liable for the breach of contract cause of action, then you do not need to consider the subject of damages. The fact that I am telling you about the law of contract damages does not mean that I believe that you will, or should, find against the defendant.

Authority: From State of Connecticut Civil Jury Instructions, Instruction No. 4.5-2 Damages-General.

> Damages for breach of contract are measured as of the time of the breach. These damages consist of direct damages (expectation, reliance) or consequential damages as I will explain in a moment. In addition you may award interest.

Authority: From State of Connecticut Civil Jury Instructions, Instruction No. 4.5-3 Components of Damages.

> The plaintiff must prove by a preponderance of the evidence the amount of any damages to be awarded. The evidence must give you a sufficient basis to estimate the amount of damages to a reasonable certainty. Although damages may be based on reasonable and probable estimates, you may not award damages on the basis of guess, speculation or conjecture.

Authority: *Leisure Resort Technology, Inc. v. Trading Cove Associates,* 277 Conn. 21, 35 (2006); *Beverly Hill Concepts, Inc. v. Schatz & Schatz, Ribicoff & Kotkin,* 247 Conn. 48, 69 (1998); *West Haven Sound Development Corp. v. West Haven,* 207 Conn. 308, 317 (1988); *Bronson & Townsend Co. v. Battistoni,* 167 Conn. 321, 326-27 (1974); *Bertozzi v. McCarthy,* 164 Conn. 463, 468 (1973). From State of Connecticut Civil Jury Instructions, Instruction No. 4.5-4 Plaintiff's Burden of Proof as to Amounts.

> Any damages you award on the breach of contract count should be designed to place the plaintiff, so far as can be done by money, in the same position as that which he would have been in had the contract been fully performed. You should determine the fair and reasonable value, in money, of the position the plaintiff would have been in if the defendant had fully performed the contract. Then you should determine the fair and reasonable value, in money, of the position the plaintiff was in at the time of the defendant's breach of the contract. The difference between the amount for performance and the amount of the breach should be your award.

Authority: *Ambrogio v. Beaver Road Associates,* 267 Conn. 148, 155 (2003); *Beckman v. Jalich Homes, Inc.,* 190 Conn. 299, 309-10 (1983); *Lar Rob Bus Corp. v. Fairfield,* 170 Conn. 397, 404-405 (1976); *Bachman v. Fortuna,* 145 Conn. 191, 194 (1958). From State of Connecticut Civil Jury Instructions, Instruction No. 4.5-6 Damages - Expectation/Benefit of the Bargain/ Make Whole.

> In addition to direct damages, which I have just explained to you, any damages you award on the breach of contract count also may include amounts to compensate the plaintiff for consequential damages. Consequential damages are damages that are reasonably foreseeable to the defendant as the natural and probable results of its breach. The plaintiff claims that the losses he suffered for the emotional distress and upset from Traveler's false accusations are consequential damages. If you find that the losses Mr. Riley suffered for the emotional distress and upset from Traveler's false accusations were reasonably foreseeable to the defendant as the natural and probable results of its breach, then your award should include the fair and reasonable value of these as consequential damages.

Authority: *Ambrogio v. Beaver Road Associates,* 267 Conn. 148, 155 (2003); *Gaynor Electric Co. v. Hollander,* 29 Conn. App. 865, 869 (1993); *Hadley v. Baxendale,* 9 Exch. 341, 156 Eng. Rep. 145 (1854). See General Statutes § 42a-2-715 (2). From State of Connecticut Civil Jury Instructions, Instruction No. 4.5-11 Damages - Consequential.

In addition to damages on the breach of contract count, you may award interest. This is intended to compensate the plaintiff for the loss of use of money that was not paid when it was due. To award interest, you must find that the plaintiff is entitled to an award of damages in the first place, and you must find under all of the circumstances that the defendant wrongfully detained money due to the plaintiff. There is no hard and fast rule for what constitutes wrongful detention. The question is whether justice requires that the plaintiff be paid interest for the loss of use of money.

If you decide to award interest, then you must compute the amount. Your verdict form will help you to do this. You must first determine the time period that the money was wrongfully detained. In this case, it is claimed that the wrongful detention began when the money under the contract became due and payable, and the end date would be the date of the verdict. You need to determine the total number of days. Under our statutes you must divide that number of days by 360 days. You should then multiply that by 10% percent which is our annual interest rate. You should then multiply that percentage by the total amount of damages to come up with the amount of interest.

Authority: *Blakeslee Arpaia Chapman, Inc. v. El Constructors, Inc.,* 239 Conn. 708, 734-38 (1997) (holding that wrongful detention is determined "in view of the demands of justice rather than through application of an arbitrary rule"); *West Haven Sound Development Corp. v. West Haven,* 207 Conn. 308, 321 (1988); *Scribner v. O'Brien, Inc.,* 169 Conn. 389, 405-406 (1975); *Southern New England Contracting Co. v. State,* 165 Conn. 644, 664-65 (1974); *Bertozzi v. McCarthy,* 164 Conn. 463, 467 (1973); *Rapin v. Nettleton,* 50 Conn. App. 640, 651 (1988); *Sperry v. Moler,* 3 Conn. App. 692, 695-96 (1985). See General Statutes §§ 37-3a and 37 -1. From State of Connecticut Civil Jury Instructions, Instruction No. 4.5-15 Interest Pursuant to General Statutes § 37-3a.

11. *NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS*

In addition to the breach of contract claim, the plaintiff makes a claim of negligent infliction of emotional distress. There are three elements that the plaintiff must prove for a finding of negligent infliction of emotional distress: 1) the defendant engaged in conduct that the defendant should have realized involved an unreasonable risk of causing emotional distress and that that distress, if it were caused, might result in illness or bodily injury; 2) that such conduct caused emotional distress to the plaintiff; and 3) the distress was of such a nature as might result in illness or bodily harm.

As to the first element, that is, that the defendant engaged in conduct that the defendant should have realized involved an unreasonable risk of causing emotional distress and that that distress, if it were caused, might result in illness or bodily injury, the plaintiff need not prove that the defendant intended to cause any harm or distress to the plaintiff but only that the defendant should have known that it was likely that a reasonable person under the circumstances would be distressed by the conduct and that that distress might result in illness or bodily injury. As to the second and third elements, you must determine whether the plaintiff actually experienced fear or distress, and if so, whether the fear or distress experienced by the plaintiff was reasonable in light of the conduct of the defendant. If you find that it was reasonable for the plaintiff to experience distress in light of the conduct of the defendant, then the plaintiff is entitled to prevail and you can go on to consider damages. Conversely, if any distress experienced by the plaintiff was unreasonable in light of the defendant's conduct, then you cannot find in favor of the plaintiff on this count and you must return a verdict for the defendant.

In this case, the plaintiff has alleged that the defendant wrongfully accused the plaintiff of arson and of making material false statements, that the defendant refused to provide any basis for its claims or to divulge any aspect of its fire investigation, that the defendant wrongfully denied coverage to the plaintiff for his loss and refused to pay him. The plaintiff alleges that as a result of the defendant's conduct he suffered severe emotional distress.

If you find that the plaintiff has proved all of the elements of negligent infliction of emotional distress, you will find for the plaintiff and award damages on this count as I will describe in the "damages" section of these instructions. If you find that the plaintiff has not proved the elements of negligent infliction of emotional distress then you will return a defendant's verdict on this count.

Authority: *Larobina v. McDonald,* 274 Conn. 394, 410 (2005); *Carrol v. Allstate Ins. Co.,* 262 Conn. 433, 446-7 (2003); Restatement (Second) of Torts § 313 (2007). From State of Connecticut Civil Jury Instructions, Instruction No. 3.12-2 Negligent Infliction of Emotional Distress.

12. *NEGLIGENCE*

Negligence is the violation of a legal duty which one person owes to another.

Authority: *Phaneuf v. Berselli,* 119 Conn. App. 330, 336, 988 A. 2d 344 (2010). From State of Connecticut Civil Jury Instructions, Instruction No. 3.6-1 Negligence-Definition.

13. *LEGAL CAUSE*

If you find that the defendant was negligent in any of the ways alleged in the plaintiff's complaint, you must next decide if such negligence was a legal cause of any of the plaintiff's claimed injuries. Legal cause has two components: cause in act and proximate cause.

Authority: *Doe v. Manheimer,* 212 Conn. 748, 757 (1989). From State of Connecticut Civil Jury Instructions, Instruction No. 3.1-1 Legal Cause (comments and notes omitted).

> To establish liability for negligence, the plaintiff need only prove that a portion of the injuries complained of were legally caused by the defendant's negligence.

Authority: From State of Connecticut Civil Jury Instructions, Instruction No. 3.6-1 Negligence - Definition Notes.
A cause in fact is an actual cause. The test for cause in fact is, simply, "Would the injury have occurred were it not for the defendant's negligence?" If you answer to this question is "yes," then the defendant's negligence was not a cause in fact of the plaintiff's injuries.

Authority: *Winn v. Posades,* 281 Conn. 50, 56 (2007) ("[t]he test for cause in fact is, simply, would the injury have occurred were it not for the actor's conduct"); *Shaughnessy v. Morrison,* 116 Conn. 661, 666 (1933) ("[a]n act or omission can hardly be regarded as the cause of an event which would have happened if the act or omission had not occurred"). From State of Connecticut Civil Jury Instructions, Instruction No. 3.1-2 Cause in Fact.
Negligence is a proximate cause of an injury if it was a substantial factor in

bringing the injury about.

Authority: *Winn v. Posades,* 281 Conn. 50, 56 (2007); see also *Pilon v. Alderman,* 112 Conn. 300, 301-302 (1930) ("The meaning of the term 'substantial factor' is so clear as to need no expository definition...Indeed, it is doubtful if the expression is susceptible of definition more understandable than the simple and familiar words it employs."); *Phelps v. Lankes, 14* Conn. App. 597, 606-607 (2003) (same). From State of Connecticut Civil Jury Instructions, Instruction No. 3.1-3 Proximate Cause - Definition.

> To prove that an injury is a reasonably foreseeable consequence of negligent conduct, the plaintiff need not prove that the defendant actually foresaw or should have foreseen the extent of the harm suffered or the manner in which it occurred. Instead, the plaintiff must prove that it is a harm of the same general nature as that which a reasonably prudent person in the defendant's position should have anticipated, in view of what the defendant knew or should have known at the time of the negligent conduct.

Authority: *Merhi v. Becker,* 164 Conn. 516, 521 (1973) ("if the... [defendant's] conduct is a substantial factor in bring about harm to another, the fact that the... [defendant] neither foresaw nor should have foreseen the extent of the harm or the manner in which it occurred does not prevent him from being liable.' Restatement (Second), 2 Torts § 435 (1). Neither foreseeability of the extent nor the manner of the injury constitute the criteria for deciding questions of proximate cause. The test is whether the harm which occurred was of the same general nature as the foreseeable risk created by the defendant's negligence"). From State of Connecticut Civil Jury Instructions, Instruction No. 3.1-7 Proximate Cause - Foreseeable Risk.

14. *DAMAGES - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS*

I have previously explained to you the rule of damages in the context of the plaintiff's breach of contract claim. I will now do so in the context of his claim for negligent infliction of emotional distress.

The plaintiff cannot recover more than once for the same loss, even if he prevails on two causes of action. I have provided you with a verdict form, and I will go through it with you to make sure you understand where there is potential for the plaintiff to recover more than once for the same loss.

Authority: State of Connecticut Civil Jury Instructions, Instruction No. 4.5-5 Plaintiff Cannot Recover More than Once for Same Loss.

> The rule of damages for a claim of negligent infliction of emotional distress is as follows. Insofar as money can do it, the plaintiff is to receive fair, just and reasonable compensation for all injuries and losses, past and future, which are proximately caused by the defendant's proven negligence. Under this rule, the purpose of an award of damages is not to punish or penalize the defendant for its negligence, but to compensate the plaintiff for his resulting injuries and losses. You must attempt to put the plaintiff in the same position, as far as money can do it, that he would have been in had the defendant not been negligent. The plaintiff is entitled to recover for all damages proximately caused by the defendant's wrongful act whether or not the results were reasonably to be anticipated from such an act.

Authority: Wright and Ankerman, *Connecticut Jury Instructions,* § 235; *Mourison v. Hansen,* 128 Conn. 62, 66 (1941). State of Connecticut Civil Jury Instructions, Instruction No. 3.4-1 Damages-General.

Our laws impose certain rules to govern the award of damages in any case where liability is proven. Just as the plaintiff has the burden of proving liability by a fair preponderance of the evidence, the plaintiff has the burden of proving his entitlement to

recover damages by a fair preponderance of the evidence. To that end, the plaintiff must prove both the nature and extent of each particular loss or injury for which he seeks to recover damages and that the loss or injury in question was proximately caused by the defendant's negligence. You may not guess or speculate as to the nature or extent of the plaintiff's losses or injuries. Your decision must be based on reasonable probabilities in light of the evidence presented at trial. Injuries and losses for which the plaintiff should be compensated include those he has suffered up to and including the present time and those he is reasonably likely to suffer in the future as a proximate result of the defendant's negligence. Negligence, as I previously instructed you, is a proximate cause of a loss or injury if it is a substantial factor in bringing that loss or injury about. Once the plaintiff has proved the nature and extent of his compensable injuries and losses, it becomes your job to determine what is fair, just and reasonable compensation for those injuries and losses. There is often no mathematical formula in making this determination. Instead, you must use human experience and apply sound common sense in determining the amount of your verdict.

In this case, there are two general types of damages with which you must be concerned: economic and noneconomic damages. Economic damages are monies awarded as compensation for monetary losses and expenses which the plaintiff has incurred, or is reasonably likely to incur in the future, as a result of the defendant's negligence. He is awarded damages for such things as the cost of reasonable and necessary medical care and lost earnings. Noneconomic damages are monies awarded as compensation for non-monetary losses and injuries which the plaintiff has suffered, or is reasonably likely to suffer in the future, as a result of the defendant's negligence. He is awarded damages for such things as physical pain and suffering, mental and emotional pain and suffering, and loss of or diminution of the ability to enjoy life's pleasures. Should you find for the plaintiff, you should award the plaintiff an amount of money which will fairly, justly and reasonably compensate him for these losses.

Authority: Wright and Ankerman, *Connecticut Jury Instructions, § 226a-p (4th Ed. 1993).* State of Connecticut Civil Jury Instructions, Instruction No. 3.4-1 Damages - General.
I will now instruct you more particularly on economic damages.

a. *Economic Damages*

In this case, the plaintiff seeks to recover economic damages for money due under the insurance contract. There is no claim that the plaintiff is entitled to recover money for medical treatment proximately caused by the defendant's negligence.

Authority: Wright and Daly, *Connecticut Jury Instructions,* §§ 225, 226f (3d Ed. 1981).

b. *Noneconomic Damages*

Let me now turn to noneconomic damages. In this case, the plaintiff seeks to recover noneconomic damages for the past and future losses in the form of upset, distress, suffering, and loss of the ability to fully participate in and enjoy all of his ususal life activities to the same extent as he did before the defendant's negligence.
A plaintiff who is injured by the negligence of another is entitled to be compensated for all physical pain and suffering, mental and emotional suffering, loss of the ability to enjoy life's pleasures, and permanent impairment or loss of function that he proves by a fair preponderance of the evidence to have been proximately caused by the defendant's negligence. As far as money can compensate the plaintiff for such injuries and their consequences, you must award a fair, just, and reasonable sum. You simply have to use your own good judgment in awarding damages in this category. You should consider the nature and duration of any pain and suffering that you find. A plaintiff who is injured by the negligence of another is entitled to be compensated for mental suffering caused by the defendant's negligence for the results which proximately flow from it in the same manner as he is for physical suffering.

You should consider, as a separate category for awarding damages in this case, the length of time the plaintiff was, or will probably be, unable to engage in activities which he enjoys. If you find that it is reasonably probable that he has suffered emotional harm or loss of the ability to enjoy his normal life's activities, the plaintiff is entitled to be compensated for that category of injury. Your award should be in accordance with the nature and extent of such harm, or loss of function and the length of time he is reasonably expected to endure its negative consequences.

Authority: Excerpted from State of Connecticut Civil Jury Instructions, Instruction No. 3.4-1 Damages - General; Wright and Daly, *Connecticut Jury Instructions,* § 233 (3d Ed.).

15. ***DAMAGES - ENJOYMENT OF LIFE'S ACTIVITIES***

In addition, you shall consider as an element of damages in this case, all of the periods of time during which the plaintiff was unable to participate in and enjoy his ordinary activities.

Authority: *Pisel v. Stamford Hospital,* 180 Conn. 319, 344 (1980).

> The assessment of the loss of one's ability to enjoy and carry on life's activities involves a consideration of the normal, everyday activities to which the plaintiff was accustomed prior to Traveler's accusations, and which, as a result of those accusations, were foreclosed to him in the past, or may be foreclosed to him in the future.

Authority: *Jerz v. Humphrey,* 160 Conn. 223.

> Therefore, you must compare his activities and abilities before the accusations and other alleged misconduct of the defendant to those he is capable of doing now.

Authority: *Kotsetos v. Nolan,* 170 Conn., 657.

> I further instruct you that, not only must you consider the plaintiff's activities from the date of the accusations and other alleged misconduct of the defendant until today, but you must compensate him for any future harm or loss which is reasonably probable.

Authority: Wright and Daly, *Connecticut Jury Instructions,* § 226b (3d Ed. 1981).
You, thus, must determine the activities in the future which he will not be able to enjoy which he would otherwise have been able to enjoy, and compensate him for such destruction of the capacity to enjoy life for what is expected to be the remainder of his life expectancy.

If you find that the plaintiff has proven his case against the defendant, then the plaintiff is entitled to recover damages against the defendant. If you find in favor of the plaintiff, the plaintiff is entitled to an award of damages in an amount which you

will determine to compensate him fully, fairly, and justly, for the injuries and losses sustained. It is for you, in the exercise of your best judgment, to say what is fair and just. The fundamental rule regarding damages is that the amount awarded should be fair, just, and reasonable compensation for the losses suffered as a direct and proximate consequence of the defendant's negligence. Damages are incapable of precise measurement. For this reason, considerable latitude is allowed a jury by our courts in evaluating damages.

Authority: I Wright and Daly, *Connecticut Jury Instructions.* § 231c (3d Ed. 1981).

16. *ADDITIONAL REQUESTS*

The plaintiff respectfully requests leave to supplement his request for jury instructions if necessary after the evidence and prior to the charging conference. This request is made in an abundance of caution and on the theory that the plaintiff cannot entirely anticipate how the evidence will develop and what instructions, in addition to the foregoing, will be necessary to enable the jury to reach its verdict.

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