FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

2007 APR 16 PM 4:12

LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MERRYL D. WEISS, ET AL. — CIVIL ACTION

VERSUS — NO. 06-3774

ALLSTATE INSURANCE COMPANY — SECTION "R"(5)

JURY CHARGES

MEMBERS OF THE JURY:

YOU HAVE HEARD THE EVIDENCE IN THIS CASE. I WILL NOW INSTRUCT YOU ON THE LAW THAT YOU MUST APPLY. IT IS YOUR DUTY TO FOLLOW THE LAW AS I GIVE IT TO YOU. ON THE OTHER HAND, YOU THE JURY ARE THE JUDGES OF THE FACTS. DO NOT CONSIDER ANY STATEMENT THAT I HAVE MADE IN THE COURSE OF TRIAL OR MAKE IN THESE INSTRUCTIONS AS AN INDICATION THAT I HAVE ANY OPINION ABOUT THE FACTS OF THIS CASE.

YOU HAVE HEARD THE CLOSING ARGUMENTS OF THE ATTORNEYS. STATEMENTS AND ARGUMENTS OF THE ATTORNEYS ARE NOT EVIDENCE AND ARE NOT INSTRUCTIONS ON THE LAW. THEY ARE INTENDED ONLY TO ASSIST THE JURY IN UNDERSTANDING THE EVIDENCE AND THE PARTIES' CONTENTIONS.

YOU ARE NOT TO SINGLE OUT ONE INSTRUCTION ALONE AS STATING THE LAW, BUT YOU MUST CONSIDER THE INSTRUCTIONS AS A WHOLE.

THE BURDEN OF PROOF IN A CIVIL ACTION, SUCH AS THIS ONE, IS PROOF BY A PREPONDERANCE OF THE EVIDENCE AS TO EVERY ESSENTIAL ELEMENT OF A CLAIM OR DEFENSE. TO ESTABLISH SOMETHING BY "A PREPONDERANCE OF THE EVIDENCE" MEANS SIMPLY TO PROVE THAT SOMETHING IS MORE LIKELY TO BE SO THAN NOT SO. IN OTHER WORDS, A PREPONDERANCE OF THE EVIDENCE MEANS THAT WHEN YOU WEIGH THE EVIDENCE ON A FACT AT ISSUE IN THE CASE AND COMPARE IT WITH THE EVIDENCE OPPOSED TO IT, YOU FIND THAT THE EVIDENCE IN FAVOR HAS MORE CONVINCING FORCE, AND YOU BELIEVE THAT WHAT IS SOUGHT TO BE PROVED IS MORE LIKELY TO BE TRUE THAN NOT TRUE. IN DETERMINING WHETHER ANY FACT HAS BEEN PROVED BY A PREPONDERANCE OF THE EVIDENCE IN THE CASE, YOU MAY, UNLESS OTHERWISE INSTRUCTED, CONSIDER THE TESTIMONY OF ALL WITNESSES, REGARDLESS OF WHO MAY HAVE CALLED THEM, AND ALL EXHIBITS RECEIVED IN EVIDENCE, REGARDLESS OF WHO MAY HAVE PRODUCED THEM. IF THE PROOF SHOULD FAIL TO ESTABLISH ANY ESSENTIAL ELEMENT OF A CLAIM OR DEFENSE BY A PREPONDERANCE OF THE EVIDENCE, YOU, THE JURY, SHOULD FIND FOR THE PARTY WHO DOES NOT BEAR THE BURDEN OF PROOF AS TO THAT CLAIM.

AS I HAVE STATED, A CLAIM OR DEFENSE MUST BE PROVEN ONLY BY A PREPONDERANCE OF THE EVIDENCE. A PARTY BEARING THE BURDEN OF PROOF NEED NOT PRODUCE EVERY POSSIBLE WITNESS, AND NEED NOT PROVE HIS

CASE BEYOND A REASONABLE DOUBT, AS IS NECESSARY IN A CRIMINAL CASE. BUT SPECULATION OR MERE POSSIBILITY AND EVEN UNSUPPORTED PROBABILITY IS NOT SUFFICIENT TO SUPPORT A JUDGMENT IN FAVOR OF THE PARTY BEARING THE BURDEN OF PROOF.

AS I INSTRUCTED YOU AT THE BEGINNING OF THE TRIAL, YOU ARE NOT TO READ OR LISTEN TO ANY MEDIA ACCOUNT OF THIS TRIAL, INCLUDING NEWSPAPER, TELEVISION, RADIO, INTERNET OR ANY OTHER COVERAGE. IF THERE WAS PUBLICITY ABOUT THIS TRIAL, YOU MUST IGNORE IT. YOU MUST DECIDE THIS CASE ONLY FROM THE EVIDENCE PRESENTED IN THE TRIAL.

AS I INSTRUCTED YOU, YOU MUST CONSIDER ONLY THE EVIDENCE IN THIS CASE. HOWEVER, YOU MAY DRAW SUCH REASONABLE INFERENCES FROM THE TESTIMONY AND EXHIBITS AS YOU FEEL ARE JUSTIFIED IN THE LIGHT OF COMMON EXPERIENCE. YOU MAY MAKE DEDUCTIONS AND REACH CONCLUSIONS THAT REASON AND COMMON SENSE LEAD YOU TO MAKE FROM THE TESTIMONY AND EVIDENCE.

THE TESTIMONY OF A SINGLE WITNESS MAY BE SUFFICIENT TO PROVE ANY FACT, EVEN IF A GREATER NUMBER OF WITNESSES MAY HAVE TESTIFIED TO THE CONTRARY, IF AFTER CONSIDERING ALL THE OTHER EVIDENCE YOU BELIEVE THAT SINGLE WITNESS.

THERE ARE TWO TYPES OF EVIDENCE YOU MAY CONSIDER. ONE IS DIRECT EVIDENCE--SUCH AS TESTIMONY OF AN EYEWITNESS. THE OTHER IS INDIRECT OR CIRCUMSTANTIAL EVIDENCE--THE PROOF OF CIRCUMSTANCES THAT TEND TO PROVE OR DISPROVE THE EXISTENCE OR NONEXISTENCE OF

CERTAIN OTHER FACTS. THE LAW MAKES NO DISTINCTION BETWEEN DIRECT AND CIRCUMSTANTIAL EVIDENCE, BUT SIMPLY REQUIRES THAT YOU FIND THE FACTS FROM A PREPONDERANCE OF ALL THE EVIDENCE, BOTH DIRECT AND CIRCUMSTANTIAL.

IN WEIGHING THE TESTIMONY AND IN DETERMINING THE CREDIBILITY OF ANY WITNESS, YOU MAY CONSIDER THE CONDUCT OF THE WITNESS, HIS OR HER BEARING ON THE WITNESS STAND, HIS OR HER PERSONAL FEELINGS AS DEMONSTRATED BY HIS OR HER TESTIMONY AND HIS OR HER ACTIONS, ANY INTEREST HE OR SHE MAY HAVE IN THE OUTCOME OF THE CASE, ANY PREJUDICE OR BIAS HE OR SHE MAY HAVE SHOWN, AND ANY PARTIALITY THAT HE OR SHE MAY HAVE DEMONSTRATED.

IN DETERMINING THE WEIGHT TO GIVE TO THE TESTIMONY OF A WITNESS, YOU SHOULD ASK YOURSELF WHETHER THERE WAS EVIDENCE TENDING TO PROVE THAT THE WITNESS TESTIFIED FALSELY CONCERNING SOME IMPORTANT FACT, OR WHETHER THERE WAS EVIDENCE THAT AT SOME OTHER TIME THE WITNESS SAID OR DID SOMETHING, OR FAILED TO SAY OR DO SOMETHING, THAT WAS DIFFERENT FROM THE TESTIMONY THE WITNESS GAVE BEFORE YOU DURING THE TRIAL.

YOU SHOULD KEEP IN MIND, OF COURSE, THAT A SIMPLE MISTAKE BY A WITNESS DOES NOT NECESSARILY MEAN THAT THE WITNESS WAS NOT TELLING THE TRUTH AS HE OR SHE REMEMBERS IT, BECAUSE PEOPLE MAY FORGET SOME THINGS OR REMEMBER OTHER THINGS INACCURATELY. SO, IF A WITNESS HAS MADE A MISSTATEMENT, YOU NEED TO CONSIDER WHETHER

THAT MISSTATEMENT WAS AN INTENTIONAL FALSEHOOD OR SIMPLY AN INNOCENT LAPSE OF MEMORY; AND THE SIGNIFICANCE OF THAT MAY DEPEND ON WHETHER IT HAS TO DO WITH AN IMPORTANT FACT OR WITH ONLY AN UNIMPORTANT DETAIL.

IF A WITNESS IS SHOWN TO HAVE KNOWINGLY TESTIFIED FALSELY CONCERNING ANY MATERIAL MATTER, YOU HAVE A RIGHT TO DISTRUST SUCH WITNESS' TESTIMONY IN OTHER PARTICULARS. YOU MAY REJECT ALL THE TESTIMONY OF THAT WITNESS OR GIVE IT SUCH CREDIBILITY AS YOU THINK IT DESERVES.

CERTAIN TESTIMONY WAS PRESENTED TO YOU THROUGH A DEPOSITION. A DEPOSITION IS THE SWORN, RECORDED ANSWERS TO QUESTIONS ASKED A WITNESS IN ADVANCE OF TRIAL. SOME TIME BEFORE THIS TRIAL, ATTORNEYS REPRESENTING THE PARTIES IN THIS CASE QUESTIONED THIS WITNESS UNDER OATH. A COURT REPORTER WAS PRESENT AND RECORDED THE TESTIMONY. SOME QUESTIONS AND ANSWERS WERE SHOWN TO YOU. THIS DEPOSITION TESTIMONY IS ENTITLED TO THE SAME CONSIDERATION AS IF THE WITNESS HAD BEEN PRESENT AND HAD TESTIFIED FROM THE WITNESS STAND IN COURT.

DURING THE COURSE OF THE TRIAL, YOU HAVE HEARD OBJECTIONS TO EVIDENCE. IT IS THE DUTY OF THE ATTORNEY ON EACH SIDE OF A CASE TO OBJECT WHEN THE OTHER SIDE OFFERS TESTIMONY OR EVIDENCE THAT THE ATTORNEY BELIEVES IS NOT PROPERLY ADMISSIBLE. YOU SHOULD NOT DRAW ANY INFERENCE AGAINST OR SHOW ANY PREJUDICE AGAINST A LAWYER OR HIS

CLIENT BECAUSE OF THE MAKING OF AN OBJECTION.

WHEN THE COURT ALLOWS TESTIMONY OR OTHER EVIDENCE TO BE INTRODUCED OVER THE OBJECTION OF AN ATTORNEY, THE COURT DOES NOT, UNLESS EXPRESSLY STATED, INDICATE ANY OPINION AS TO THE WEIGHT OR EFFECT OF THAT EVIDENCE. AS STATED BEFORE, THE JURORS ARE THE SOLE JUDGES OF THE CREDIBILITY OF ALL WITNESSES AND THE WEIGHT AND EFFECT OF ALL EVIDENCE.

WHEN THE COURT HAS SUSTAINED AN OBJECTION TO A QUESTION ADDRESSED TO A WITNESS, YOU MUST DISREGARD THE QUESTION ENTIRELY, AND YOU MAY DRAW NO INFERENCE FROM THE WORDING OF IT, OR SPECULATE AS TO WHAT THE WITNESS WOULD HAVE SAID IF PERMITTED TO ANSWER THE QUESTION.

AS I INSTRUCTED YOU AT THE BEGINNING OF THE TRIAL, YOUR NOTES, IF YOU HAVE CHOSEN TO TAKE ANY, SHOULD BE USED ONLY AS MEMORY AIDS. YOU SHOULD NOT GIVE YOUR NOTES PRECEDENCE OVER YOUR INDEPENDENT RECOLLECTION OF THE EVIDENCE. IF YOU HAVE NOT TAKEN NOTES, YOU SHOULD RELY ON YOUR INDEPENDENT RECOLLECTION OF THE PROCEEDINGS, AND YOU SHOULD NOT BE UNDULY INFLUENCED BY THE NOTES OF OTHER JURORS. NOTES ARE NOT ENTITLED TO ANY GREATER WEIGHT THAN THE MEMORY OR IMPRESSION OF EACH JUROR AS TO WHAT THE TESTIMONY WAS. WHETHER YOU HAVE TAKEN NOTES OR NOT, EACH OF YOU MUST FORM YOUR OWN OPINION AS TO THE FACTS OF THE CASE.

WHEN KNOWLEDGE OF TECHNICAL SUBJECT MATTER MAY BE HELPFUL TO

THE JURY, A PERSON WHO HAS SPECIAL TRAINING OR EXPERIENCE IN THAT PARTICULAR FIELD - HE IS CALLED AN EXPERT WITNESS - IS PERMITTED TO STATE HIS OPINION ON THOSE TECHNICAL MATTERS. HOWEVER, YOU ARE NOT REQUIRED TO ACCEPT THAT OPINION. AS WITH ANY OTHER WITNESS, IT IS UP TO YOU TO DECIDE WHETHER TO RELY UPON IT. IN DECIDING WHETHER TO ACCEPT OR RELY UPON THE OPINION OF AN EXPERT WITNESS, YOU MAY CONSIDER ANY BIAS OF THE WITNESS, INCLUDING ANY BIAS YOU MAY INFER FROM THE EVIDENCE THAT THE EXPERT WITNESS HAS BEEN OR WILL BE PAID FOR REVIEWING THE CASE AND TESTIFYING, OR FROM EVIDENCE THAT HE TESTIFIES REGULARLY AS AN EXPERT WITNESS AND HIS INCOME FROM SUCH TESTIMONY REPRESENTS A SIGNIFICANT PORTION OF HIS INCOME.

DO NOT LET BIAS, PREJUDICE OR SYMPATHY PLAY ANY PART IN YOUR DELIBERATIONS. CORPORATIONS AND ALL OTHER PERSONS ARE EQUAL BEFORE THE LAW AND MUST BE TREATED AS EQUALS IN A COURT OF JUSTICE. ALLSTATE, A CORPORATION, IS ENTITLED TO THE SAME FAIR TRIAL AS ANY INDIVIDUAL.

IN THIS CASE, DR. ROBERT WEISS, AS THE NAMED INSURED ON HIS HOMEOWNER'S POLICY, SEEKS DAMAGES AGAINST DEFENDANT ALLSTATE INSURANCE COMPANY FOR THE FOLLOWING CLAIMS: BREACH OF INSURANCE CONTRACT AND BAD FAITH INSURANCE CLAIMS-HANDLING. DR. WEISS'S CLAIMS ARE BASED ON LOUISIANA STATE LAW. YOU ARE TO CONSIDER EACH OF DR. WEISS'S CLAIMS SEPARATELY IN ACCORDANCE WITH THE LAW

ABOUT WHICH I WILL NOW INSTRUCT YOU.

PLAINTIFF'S BREACH OF CONTRACT CLAIM

DR. WEISS'S FIRST CLAIM IS THAT ALLSTATE BREACHED A HOMEOWNER'S INSURANCE CONTRACT WITH HIM. DR. WEISS ALLEGES THAT HE WAS NOT PAID THE FULL AMOUNT THAT HE WAS DUE UNDER HIS HOMEOWNER'S POLICY, AFTER HURRICANE KATRINA RENDERED HIS HOME A TOTAL LOSS. HE CONTENDS THAT HIS PROPERTY SUSTAINED DAMAGE BY WIND, WHICH WAS COVERED BY HIS HOMEOWNER'S POLICY, FOR WHICH HE HAS NOT BEEN PAID. ALLSTATE'S OBLIGATIONS TO DR. WEISS ARE GOVERNED BY THE TERMS OF HIS HOMEOWNER'S INSURANCE POLICY, WHICH IS A CONTRACT. UNDER LOUISIANA LAW, AN INSURANCE POLICY IS A CONTRACT BETWEEN THE TWO PARTIES, THE POLICYHOLDER AND THE INSURANCE COMPANY, AND IT HAS THE EFFECT OF LAW BETWEEN THE PARTIES. LIKE OTHER CONTRACTS, A CONTRACT OF INSURANCE WILL GENERALLY BE ENFORCED ACCORDING TO ITS TERMS, AND THE RESPECTIVE RIGHTS AND OBLIGATIONS OF THE PARTIES, BOTH OF THE INSURANCE COMPANY AND THE POLICYHOLDER, WILL BE DETERMINED BY THE TERMS AND PROVISIONS OF THE INSURANCE CONTRACT. THE WORDS OF THE POLICY DETERMINE THE EXTENT OF THE INSURANCE COVERAGE. ALLSTATE'S FAILURE TO ABIDE BY ITS DUTIES IN THE CONTRACT COULD CONSTITUTE A BREACH OF THE CONTRACT. LIKEWISE, DR. WEISS'S FAILURE TO ABIDE BY HIS DUTIES IN THE CONTRACT MAY ELIMINATE OR LIMIT THE COVERAGE

OWED TO HIM.

IN ORDER TO RECOVER FOR A BREACH OF AN INSURANCE CONTRACT, PLAINTIFF MUST PROVE THE FOLLOWING ELEMENTS BY A PREPONDERANCE OF THE EVIDENCE: 1) THAT A VALID ENFORCEABLE CONTRACT EXISTED BETWEEN THE PARTIES; 2) THAT THE CLAIM FOR DAMAGE BEING MADE UNDER THE POLICY IS COVERED BY THE POLICY; 3) THE AMOUNT OF THE CLAIM FOR DAMAGES UNDER THE CONTRACT; AND 4) THAT ALLSTATE BREACHED THE POLICY BY FAILING TO PAY A COVERED CLAIM.

IF DR. WEISS HAS FAILED TO ESTABLISH THESE ELEMENTS BY A PREPONDERANCE OF THE EVIDENCE, THEN YOU MUST FIND THAT ALLSTATE DOES NOT OWE ADDITIONAL MONEY ON HIS CLAIM.

ALLSTATE'S DEFENSES

ALLSTATE HAS DENIED LIABILITY IN THIS CASE. ALLSTATE ARGUES THAT IT PROPERLY PAID DR. WEISS BASED ON ITS DETERMINATION THAT MOST OF THE DAMAGE TO PLAINTIFF'S PROPERTY WAS CAUSED BY STORM SURGE, WHICH FALLS UNDER THE FLOOD EXCLUSION IN PLAINTIFF'S HOMEOWNER'S POLICY. UNDER LOUISIANA LAW, ALLSTATE BEARS THE BURDEN OF PROVING THE APPLICABILITY OF ANY EXCLUSIONARY CLAUSE CONTAINED IN ITS INSURANCE POLICY BY A PREPONDERANCE OF THE EVIDENCE. IF YOU FIND THAT ALLSTATE HAS MET ITS BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE PROPERTY DAMAGE CLAIMED BY DR. WEISS WAS CAUSED BY A NON-COVERED PERIL,

SUCH AS FLOODING OR STORM SURGE, THEN ALLSTATE IS NOT LIABLE TO PLAINTIFF FOR ANY DAMAGES UNDER THE POLICY.

ALLSTATE ALSO CONTENDS THAT DR. WEISS MADE A MATERIAL MISREPRESENTATION IN CONNECTION WITH HIS CLAIM UNDER HIS OTHER STRUCTURES COVERAGE AND IS THUS BARRED FROM RECOVERING UNDER THE TERMS OF HIS POLICY. A MATERIAL MISREPRESENTATION IN CONNECTION WITH A CLAIM WILL VOID COVERAGE UNDER THE POLICY ONLY IF THE INSURED KNOWINGLY AND INTENTIONALLY MADE SUCH MISREPRESENTATION WITH THE INTENT TO DECEIVE AND DEFRAUD THE INSURER. A MERE MISSTATEMENT CONCERNING THE LOSS, IF MADE IN GOOD FAITH, EVEN THOUGH ERRONEOUS, IS NOT SUFFICIENT TO VOID THE POLICY. IN THIS CONTEXT, A MISREPRESENTATION IS MATERIAL IF IT WOULD SIGNIFICANTLY AFFECT THE RIGHTS OR OBLIGATIONS OF THE INSURER. ALLSTATE NEED NOT PROVE THAT IT ACTUALLY RELIED ON THE MISREPRESENTATION IN HANDLING THE CLAIM. ALLSTATE BEARS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT DR. WEISS MADE A MATERIAL MISREPRESENTATION IN CONNECTION WITH HIS CLAIM AND THAT HE INTENTIONALLY AND KNOWINGLY DID SO, WITH THE INTENT TO DECEIVE AND DEFRAUD ALLSTATE. IF YOU FIND THAT ALLSTATE PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT DR. WEISS MADE A MATERIAL MISREPRESENTATION IN CONNECTION WITH HIS CLAIM, THEN PLAINTIFF IS NOT ENTITLED TO RECOVER ANY DAMAGES UNDER THE POLICY.

DAMAGES FOR BREACH OF CONTRACT

IF YOU FIND THAT DR. WEISS IS ENTITLED TO RECOVER FOR BREACH OF CONTRACT, YOU MUST DETERMINE THE AMOUNT ALLSTATE OWES TO HIM FOR ITS BREACH. THE MEASURE OF PAYMENT THAT IS OWED IN AN INSURANCE COVERAGE DISPUTE IS GOVERNED BY THE CONTRACT ITSELF. IF YOU FIND THAT AN ITEM OF THE PROPERTY DAMAGE CLAIMED BY DR. WEISS IS COVERED BY THE INSURANCE CONTRACT, THEN YOU MUST DETERMINE WHAT AMOUNT THE INSURANCE CONTRACT REQUIRES ALLSTATE TO PAY FOR THAT ITEM.

IN THIS CASE, ALLSTATE IS ENTITLED TO OFFSET PLAINTIFF'S DAMAGES BY THE AMOUNTS THAT HE HAS RECEIVED UNDER HIS HOMEOWNER'S POLICY AND UNDER HIS FLOOD POLICY. THE MAXIMUM AMOUNT THAT DR. WEISS CAN RECOVER FOR BREACH OF THE INSURANCE CONTRACT IS THE APPLICABLE LIMITS UNDER HIS HOMEOWNER'S POLICY FOR THE DWELLING, CONTENTS, AND ANY OTHER STRUCTURE, LESS THE AMOUNTS THAT HE HAS ALREADY RECEIVED UNDER HIS HOMEOWNER'S POLICY AND UNDER HIS FLOOD POLICY FOR THE DWELLING AND FOR ITS CONTENTS, RESPECTIVELY.

PENALTIES

IN ADDITION TO COVERAGE UNDER THE POLICY, DR. WEISS SEEKS TO RECOVER PENALTIES FROM ALLSTATE FOR FAILURE TO TIMELY ADJUST AND PAY HIS CLAIM. DR. WEISS SEEKS PENALTIES UNDER THREE PROVISIONS OF LOUISIANA LAW.

INITIATION OF LOSS ADJUSTMENT - SECTION 22:658

UNDER THE FIRST STATUTE, LOUISIANA REVISED STATUTE 22:658, AN INSURER ISSUING THE TYPE OF POLICY OWNED BY DR. WEISS MUST INITIATE LOSS ADJUSTMENT OF A PROPERTY DAMAGE CLAIM WITHIN THIRTY DAYS AFTER NOTIFICATION OF LOSS BY THE INSURED. THIS STATUTE REQUIRES THAT ALLSTATE TAKE SOME SUBSTANTIVE AND AFFIRMATIVE STEP TO ACCUMULATE THE FACTS THAT ARE NECESSARY TO EVALUATE THE CLAIM WITHIN THE THIRTY DAY PERIOD. SIMPLY OPENING DR. WEISS'S FILE DOES NOT SATISFY THIS REQUIREMENT. IT IS NOT NECESSARY TO FIND ALLSTATE'S FAILURE TO BEGIN THE LOSS ADJUSTMENT PROCESS ARBITRARY OR CAPRICIOUS. FAILURE TO BEGIN THE CLAIMS-ADJUSTMENT PROCESS WITHIN THIRTY DAYS OF NOTIFICATION OF LOSS IS SUFFICIENT FOR ALLSTATE TO BE HELD LIABLE UNDER THIS PART OF SECTION 22:658. IF YOU FIND THAT ALLSTATE VIOLATED THIS PART OF SECTION 22:658, THEN DR. WEISS IS ENTITLED TO ANY DAMAGES SUSTAINED AS A RESULT OF THE FAILURE TO INITIATE LOSS ADJUSTMENT WITHIN THIRTY DAYS AFTER NOTIFICATION OF LOSS. IN ASSESSING ANY DAMAGES FOR THIS CONDUCT, DR. WEISS IS ENTITLED TO GENERAL DAMAGES FROM THE FAILURE TO INITIATE LOSS ADJUSTMENT BUT YOU MAY NOT AWARD DAMAGES FOR THE LOSSES COVERED UNDER THE POLICY. GENERAL DAMAGES INCLUDE, IF PROVED, MENTAL ANGUISH AND DISTRESS RESULTING FROM ALLSTATE'S FAILURE TO INITIATE LOSS ADJUSTMENT WITHIN THIRTY DAYS AFTER NOTIFICATION OF LOSS. DR. WEISS MUST PROVE BY A PREPONDERANCE OF

THE EVIDENCE THAT HE SUFFERED DAMAGES FROM ALLSTATE'S FAILURE TO INITIATE LOSS ADJUSTMENT WITHIN THIRTY DAYS AFTER NOTIFICATION OF LOSS.

TO RECOVER FOR MENTAL ANGUISH AND DISTRESS, PLAINTIFF NEED NOT INTRODUCE EVIDENCE OF THE VALUE OF SUCH INTANGIBLE LOSS. THERE IS NO EXACT STANDARD FOR FIXING THE COMPENSATION TO BE AWARDED FOR THIS ELEMENT OF DAMAGE. AN AWARD MUST BE FAIR IN LIGHT OF THE EVIDENCE PRESENTED. DR. WEISS MUST PROVE THAT HE SUFFERED MENTAL ANGUISH AND DISTRESS THAT WAS GENUINE AND SERIOUS AND THAT IT RESULTED FROM ALLSTATE'S FAILURE TO INITIATE LOSS ADJUSTMENT WITHIN THIRTY DAYS AFTER NOTIFICATION OF LOSS. IF YOU AWARD DAMAGES FOR ALLSTATE'S FAILURE TO INITIATE LOSS ADJUSTMENT WITHIN THIRTY DAYS AFTER NOTIFICATION OF LOSS, THE AMOUNT YOU DETERMINE MAY NOT BE USED AS PUNISHMENT AND CANNOT BE IMPOSED OR INCREASED TO PENALIZE THE DEFENDANT. YOU SHOULD NOT AWARD RECOVERY FOR SPECULATIVE DAMAGES, BUT ONLY FOR THOSE DAMAGES THAT DR. WEISS HAS ACTUALLY SUSTAINED.

IF YOU FIND THAT ALLSTATE FAILED TO INITIATE LOSS ADJUSTMENT WITHIN THIRTY DAYS AFTER NOTIFICATION OF LOSS, THEN IN ADDITION TO THESE DAMAGES, YOU MAY AWARD DR. WEISS A PENALTY OF UP TO TWO TIMES THE DAMAGES AWARDED AS A RESULT OF THAT CONDUCT <u>OR</u> FIVE THOUSAND DOLLARS, WHICHEVER IS GREATER. IF YOU FIND THAT ALLSTATE FAILED TO INITIATE LOSS ADJUSTMENT WITHIN THIRTY DAYS

AFTER NOTIFICATION OF LOSS, BUT THAT DR. WEISS DID NOT SUFFER ANY DAMAGES AS A RESULT OF THAT CONDUCT, THEN YOU MAY AWARD DR. WEISS FIVE THOUSAND DOLLARS AS A PENALTY.

CLAIMS HANDLING - SECTION 22:658

ALSO UNDER SECTION 22:658, AN INSURER MUST PAY A CLAIM AND/OR MAKE A WRITTEN OFFER TO SETTLE A CLAIM WITHIN THIRTY DAYS AFTER IT RECEIVES SATISFACTORY PROOF OF LOSS. IF THE INSURER FAILS TO PAY OR OFFER TO SETTLE THE CLAIM WITHIN THIRTY DAYS AFTER RECEIPT OF SATISFACTORY PROOF OF LOSS AND ITS FAILURE IS ARBITRARY, CAPRICIOUS OR WITHOUT PROBABLE CAUSE, THE INSURER IS LIABLE TO PAY A PENALTY, IN ADDITION TO THE AMOUNT DUE UNDER THE POLICY. TO DETERMINE IF A PENALTY IS DUE UNDER LOUISIANA REVISED STATUTE SECTION 22:658, YOU MUST DETERMINE WHETHER ALLSTATE RECEIVED SATISFACTORY PROOF OF LOSS, WHETHER IT THEN FAILED TO PAY OR MAKE A WRITTEN OFFER TO SETTLE THE CLAIM WITHIN THE THIRTY DAY PERIOD AFTER RECEIPT OF SUCH PROOF, AND WHETHER ALLSTATE'S FAILURE WAS ARBITRARY, CAPRICIOUS, OR WITHOUT PROBABLE CAUSE.

A PROOF OF LOSS IS SATISFACTORY IF IT INFORMS THE INSURER OF THE FACTS OF THE CLAIM. THE PROOF OF LOSS IS NOT REQUIRED TO BE IN ANY FORMAL STYLE. AS LONG AS THE INSURER RECEIVES SUFFICIENT INFORMATION TO ACT ON THE CLAIM, THE MANNER IN WHICH IT OBTAINS THE INFORMATION IS IMMATERIAL.

WHETHER ALLSTATE'S REFUSAL TO PAY DR. WEISS'S CLAIM IS ARBITRARY, CAPRICIOUS OR WITHOUT PROBABLE CAUSE DEPENDS ON THE FACTS KNOWN TO THE INSURER AT THE TIME OF ITS ACTION. AN INSURER'S ACTION IS ARBITRARY OR CAPRICIOUS WHEN ITS WILLFUL REFUSAL OF A CLAIM IS NOT BASED ON A GOOD FAITH DEFENSE, OR IS UNREASONABLE OR WITHOUT PROBABLE CAUSE. AN INSURER'S REFUSAL TO PAY IS NOT ARBITRARY, CAPRICIOUS, OR WITHOUT PROBABLE CAUSE WHEN THE INSURER HAS A REASONABLE BASIS FOR DENYING THE CLAIM. THE QUESTION IS WHETHER THE INSURER ACTED REASONABLY IN FAILING TO TIMELY PAY THE CLAIM ONCE IT HAD ADEQUATE NOTICE.

IF YOU FIND THAT PLAINTIFF IS ENTITLED TO A PENALTY UNDER SECTION 22:658 FOR ALLSTATE'S ARBITRARY OR CAPRICIOUS FAILURE TO PAY OR OFFER TO SETTLE DR. WEISS'S CLAIM WITHIN THIRTY DAYS AFTER IT RECEIVED SATISFACTORY PROOF OF LOSS, THEN PLAINTIFF IS ENTITLED TO RECEIVE A PENALTY OF 25 PERCENT OF THE AMOUNT DUE TO DR. WEISS UNDER THE INSURANCE CONTRACT.

CLAIMS HANDLING - SECTION 22:1220

PLAINTIFF ALSO CLAIMS PENALTIES AND DAMAGES UNDER LOUISIANA REVISED STATUTE SECTION 22:1220. UNDER THAT STATUTE, AN INSURER OWES TO ITS INSURED A DUTY OF GOOD FAITH AND FAIR DEALING. THE INSURER HAS AN AFFIRMATIVE DUTY TO ADJUST CLAIMS FAIRLY AND PROMPTLY AND TO MAKE A REASONABLE EFFORT TO SETTLE CLAIMS WITH

THE INSURED.

YOU MUST DETERMINE WHETHER ALLSTATE HAS BREACHED ITS DUTY TO DR. WEISS. IN THIS CASE, DR. WEISS CLAIMS THAT ALLSTATE BREACHED THE DUTY OF GOOD FAITH AND FAIR DEALING BY FAILING TO PAY THE AMOUNT OF HIS CLAIM WITHIN SIXTY DAYS AFTER ALLSTATE RECEIVED SATISFACTORY PROOF OF LOSS AND THAT SUCH FAILURE WAS ARBITRARY, CAPRICIOUS, OR WITHOUT PROBABLE CAUSE.

DR. WEISS MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT ALLSTATE FAILED TO PAY THE AMOUNT OF HIS CLAIM WITHIN SIXTY DAYS AFTER IT RECEIVED SATISFACTORY PROOF OF LOSS AND THAT SUCH FAILURE WAS ARBITRARY, CAPRICIOUS, OR WITHOUT PROBABLE CAUSE. YOU ARE TO DETERMINE WHETHER ALLSTATE RECEIVED SATISFACTORY PROOF OF LOSS, WHETHER IT THEN FAILED TO PAY DR. WEISS WITHIN THE SIXTY DAY PERIOD AFTER IT RECEIVED SUCH PROOF, AND WHETHER ALLSTATE'S FAILURE TO PAY WAS ARBITRARY, CAPRICIOUS, OR WITHOUT PROBABLE CAUSE.

AS I INSTRUCTED YOU EARLIER, A PROOF OF LOSS IS SATISFACTORY IF IT INFORMS THE INSURER OF THE FACTS OF THE CLAIM. THE PROOF OF LOSS IS NOT REQUIRED TO BE IN ANY FORMAL STYLE. AS LONG AS THE INSURER RECEIVES SUFFICIENT INFORMATION TO ACT ON THE CLAIM, THE MANNER IN WHICH IT OBTAINS THE INFORMATION IS IMMATERIAL.

AS I INSTRUCTED YOU EARLIER, WHETHER ALLSTATE'S REFUSAL TO PAY DR. WEISS'S CLAIM IS ARBITRARY, CAPRICIOUS OR WITHOUT

PROBABLE CAUSE DEPENDS ON THE FACTS KNOWN TO THE INSURER AT THE TIME OF ITS ACTION. AN INSURER'S ACTION IS ARBITRARY OR CAPRICIOUS WHEN ITS WILLFUL REFUSAL OF A CLAIM IS NOT BASED ON A GOOD FAITH DEFENSE, OR IS UNREASONABLE OR WITHOUT PROBABLE CAUSE. AN INSURER'S REFUSAL TO PAY IS NOT ARBITRARY, CAPRICIOUS, OR WITHOUT PROBABLE CAUSE WHEN THE INSURER HAS A REASONABLE BASIS FOR DENYING THE CLAIM. THE QUESTION IS WHETHER THE INSURER ACTED REASONABLY IN FAILING TO TIMELY PAY THE CLAIM ONCE IT HAD ADEQUATE NOTICE.

IF YOU FIND THAT ALLSTATE FAILED TO PAY THE AMOUNT OF PLAINTIFF'S CLAIM WITHIN SIXTY DAYS AFTER IT RECEIVED SATISFACTORY PROOF OF LOSS AND THAT ITS FAILURE WAS ARBITRARY, CAPRICIOUS, OR WITHOUT PROBABLE CAUSE, THEN DR. WEISS IS ENTITLED TO ANY DAMAGES SUSTAINED AS A RESULT OF ALLSTATE'S FAILURE TO PAY. IN ASSESSING ANY DAMAGES FOR ALLSTATE'S FAILURE TO PAY, DR. WEISS IS ENTITLED TO GENERAL DAMAGES SUSTAINED AS A RESULT OF ALLSTATE'S FAILURE TO PAY BUT YOU MAY NOT AWARD DAMAGES FOR THE LOSSES COVERED UNDER THE POLICY. GENERAL DAMAGES INCLUDE, IF PROVED, MENTAL ANGUISH AND DISTRESS RESULTING FROM ALLSTATE'S ARBITRARY OR CAPRICIOUS FAILURE TO PAY HIS CLAIM WITHIN SIXTY DAYS AFTER IT RECEIVED SATISFACTORY PROOF OF LOSS. DR. WEISS MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE SUFFERED DAMAGES FROM ALLSTATE'S ARBITRARY OR CAPRICIOUS FAILURE TO PAY

HIS CLAIM WITHIN SIXTY DAYS OF RECEIPT OF SATISFACTORY PROOF OF LOSS. IN DETERMINING WHETHER AND FOR HOW MUCH TO COMPENSATE DR. WEISS FOR HIS GENERAL DAMAGES, USE THE SAME STANDARD THAT I DESCRIBED TO YOU WHEN I INSTRUCTED YOU ABOUT LOUISIANA REVISED STATUTE SECTION 22:658 ON PAGE THIRTEEN OF THESE INSTRUCTIONS.

IF YOU FIND THAT ALLSTATE FAILED TO PAY THE AMOUNT OF PLAINTIFF'S CLAIM WITHIN SIXTY DAYS AFTER RECEIPT OF SATISFACTORY PROOF OF LOSS FROM PLAINTIFF AND THAT SUCH FAILURE WAS ARBITRARY, CAPRICIOUS, OR WITHOUT PROBABLE CAUSE, THEN IN ADDITION TO THESE DAMAGES, YOU MAY AWARD DR. WEISS A PENALTY OF UP TO TWO TIMES THE DAMAGES AWARDED AS A RESULT OF THAT CONDUCT <u>OR</u> FIVE THOUSAND DOLLARS, WHICHEVER IS GREATER. IF YOU FIND THAT ALLSTATE FAILED TO PAY THE AMOUNT OF PLAINTIFF'S CLAIM WITHIN SIXTY DAYS AFTER IT RECEIVED SATISFACTORY PROOF OF LOSS AND THAT ITS FAILURE WAS ARBITRARY, CAPRICIOUS, OR WITHOUT PROBABLE CAUSE, BUT THAT DR. WEISS DID NOT SUFFER ANY DAMAGES AS A RESULT OF THAT CONDUCT, THEN YOU MAY AWARD DR. WEISS FIVE THOUSAND DOLLARS AS A PENALTY UNDER LOUISIANA REVISED STATUTE SECTION 22:1220.

GENERAL INSTRUCTIONS REGARDING DAMAGES

I CHARGE YOU THAT ARGUMENTS OF AN ATTORNEY CONCERNING HIS OR HER ESTIMATE OF DOLLAR AMOUNTS TO BE AWARDED FOR DAMAGES ARE NOT EVIDENCE IN THE CASE. THE DETERMINATION OF DAMAGES IS SOLELY

YOUR FUNCTION, AND IT MUST BE BASED ON COMPETENT EVIDENCE.

YOU SHOULD NOT INTERPRET THE FACT THAT I HAVE GIVEN YOU INSTRUCTIONS ABOUT THE PLAINTIFF'S DAMAGES AS ANY INDICATION IN ANY WAY THAT I BELIEVE THAT THE PLAINTIFF SHOULD, OR SHOULD NOT, WIN THIS CASE OR RECOVER DAMAGES. IT IS YOUR TASK FIRST TO DETERMINE WHETHER ALLSTATE IS LIABLE TO DR. WEISS. I AM INSTRUCTING YOU ON DAMAGES ONLY SO THAT YOU WILL HAVE GUIDANCE IN THE EVENT THAT YOU DECIDE THAT ALLSTATE IS LIABLE TO DR. WEISS AND DR. WEISS HAS SUFFERED DAMAGES BY REASON OF ALLSTATE'S CONDUCT.

DELIBERATIONS

WHEN YOU RETIRE TO THE JURY ROOM TO DELIBERATE ON YOUR VERDICT YOU MAY TAKE THESE CHARGES AND THE TRIAL EXHIBITS WITH YOU. YOUR VERDICT MUST REPRESENT THE CONSIDERED JUDGMENT OF EACH JUROR. IN ORDER TO REACH A VERDICT, IT IS NECESSARY THAT EACH JUROR AGREE. YOUR VERDICT MUST BE UNANIMOUS. IT IS YOUR DUTY AS JURORS TO CONSULT WITH ONE ANOTHER AND TO DELIBERATE WITH A VIEW TOWARD REACHING AN AGREEMENT, IF YOU CAN DO SO WITHOUT VIOLENCE TO YOUR INDEPENDENT JUDGMENT. YOU MUST DECIDE THIS CASE FOR YOURSELF, BUT ONLY AFTER AN IMPARTIAL CONSIDERATION OF THE EVIDENCE IN THE CASE WITH YOUR FELLOW JURORS. IN THE COURSE OF YOUR DELIBERATIONS, DO NOT HESITATE TO REEXAMINE YOUR OWN VIEWS

AND CHANGE YOUR OPINION, IF YOU BECOME CONVINCED YOU ARE WRONG. BUT DO NOT GIVE UP YOUR HONEST BELIEFS SOLELY BECAUSE THE OTHERS THINK DIFFERENTLY OR JUST TO FINISH THE CASE.

REMEMBER AT ALL TIMES YOU ARE NOT PARTISANS. YOU ARE JUDGES--JUDGES OF THE FACTS. YOUR ONLY INTEREST IS TO SEEK THE TRUTH FROM THE EVIDENCE IN THE CASE.

WHEN YOU RETIRE TO THE JURY ROOM, SELECT ONE OF YOUR MEMBERS AS A FOREPERSON. THE FOREPERSON WILL PRESIDE OVER YOUR DELIBERATIONS AND WILL BE YOUR SPOKESPERSON HERE IN COURT. A FORM OF SPECIAL VERDICT HAS BEEN PREPARED FOR YOUR CONVENIENCE. YOU WILL TAKE THIS WITH YOU INTO THE JURY ROOM.

(THE SPECIAL VERDICT FORM IS READ TO THE JURY)

YOU WILL NOTE THAT THE FORM CONTAINS SEVERAL QUESTIONS. THE ANSWER TO EACH QUESTION MUST BE THE UNANIMOUS ANSWER OF THE JURY. IN THE SPACE PROVIDED BELOW EACH QUESTION, YOU WILL FIND DIRECTIONS THAT INSTRUCT YOU EITHER TO ANSWER THE NEXT QUESTION, TO PROCEED TO SOME OTHER QUESTION OR TO STOP AND RETURN TO THE COURTROOM WITH YOUR VERDICT. YOU MUST CAREFULLY FOLLOW THESE DIRECTIONS AS YOU COMPLETE THE FORM.

WHEN YOU FINISH DELIBERATING, THE FOREPERSON SHOULD SIGN AND DATE THE SPECIAL VERDICT FORM.

IF YOU WANT TO COMMUNICATE WITH ME, YOU MAY SEND A NOTE BY THE MARSHAL. YOU SHOULD NOT ATTEMPT TO COMMUNICATE WITH ME BY

ANY MEANS OTHER THAN IN WRITING, AND I WILL NOT COMMUNICATE WITH ANY MEMBER OF THE JURY ON ANY SUBJECT TOUCHING ON THE MERITS OF THE CASE OTHER THAN IN WRITING, OR ORALLY IN OPEN COURT. I WILL ALWAYS DISCLOSE YOUR QUESTION AND MY RESPONSE TO THE ATTORNEYS BEFORE I ANSWER ANY OF YOUR QUESTIONS.

BEAR IN MIND THAT YOU ARE NEVER TO REVEAL TO ANY PERSON--NOT EVEN TO THE COURT--HOW THE JURY STANDS, NUMERICALLY OR OTHERWISE, ON THE QUESTIONS BEFORE YOU, UNTIL YOU HAVE REACHED A UNANIMOUS VERDICT.

YOU MAY NOW RETIRE TO THE JURY ROOM TO CONDUCT YOUR DELIBERATIONS.