

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA
CIVIL ACTION**

JOHN ROBERT SEBO, individually and as
Trustee under Revocable Trust Agreement
of John Robert Sebo dated November 4, 2004,

Plaintiff,

v.

Case No. 07-0054-CA

Consolidated with: 07-1539-CA

AMERICAN HOME ASSURANCE COMPANY,
INC., et al.

Defendant.

_____ /

PLAINTIFF'S NOTICE OF FILING

Plaintiff, JOHN ROBERT SEBO, individually and as Trustee under Revocable Trust Agreement of John Robert Sebo dated November 4, 2004, by and through the undersigned counsel, and pursuant to the Uniform Order Setting Jury/Non-Jury Trial, Pretrial Conference and Docket Sounding dated January 19, 2021, gives notice of filing the following:

1. Sebo's Proposed Jury Instructions;
2. Sebo's Proposed Verdict Form;
3. Sebo's Objections to American Home Assurance Company, Inc.'s Counter-Designations and Objections to John Robert Sebo's Trial Deposition Designations; and
4. American Home Assurance Company, Inc.'s Objections to Plaintiff's Amended Exhibit List.

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2022, a true and correct copy of the foregoing has been electronically filed using the E-Portal filing system, which will electronically serve a copy of the same upon the parties listed below:

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Respectfully submitted,

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AMERICAN HOME ASSURANCE
COMPANY, et al.

Defendants.

_____ /

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS

Plaintiff John Robert Sebo, individually and as Trustee under Revocable Trust Agreement of John Robert Sebo dated November 4, 2004, submits the attached jury instructions.

**PROPOSED JURY INSTRUCTION NO. 1
WEIGHING THE EVIDENCE**

In deciding this case, it is your duty as jurors to answer certain questions I ask you to answer on a special form, called a verdict form. You must come to an agreement about your verdict.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence and all facts that were admitted or agreed to by the parties, and any fact of which the court has taken judicial notice.

In reaching your verdict, you must think about and weigh the testimony and any documents, photographs, or other material that has been received in evidence. You may also consider any facts that were admitted or agreed to by the lawyers. Your job is to determine what the facts are. You may use reason and common sense to reach conclusions. You may draw reasonable inferences from the evidence. But you should not guess about things that were not covered here. And, you must always apply the law as I have explained it to you.

Florida Standard Jury Instruction 601.1

ACCEPTED _____

REJECTED _____

MODIFIED _____

PROPOSED JURY INSTRUCTION NO. 2
BELIEVABILITY OF WITNESSES

Let me speak briefly about witnesses. In evaluating the believability of any witness and the weight you will give the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

Florida Standard Jury Instruction 601.2(a)

ACCEPTED _____

REJECTED _____

MODIFIED _____

**PROPOSED JURY INSTRUCTION NO. 3
BELIEVABILITY OF EXPERT WITNESSES**

You have heard opinion testimony on certain technical subjects from persons referred to as expert witnesses.

You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.

Florida Standard Jury Instruction 601.2(b)

ACCEPTED _____

REJECTED _____

MODIFIED _____

**PROPOSED JURY INSTRUCTION NO. 4
GREATER WEIGHT OF THE EVIDENCE AND BURDEN OF PROOF**

If the greater weight of the evidence does not support the claims of Bob Sebo, then your verdict should be for American Home Assurance Company.

However, if the greater weight of the evidence does support the claims of Bob Sebo, and does not support the defenses of American Home Assurance Company then your verdict should be for Bob Sebo and against American Home Insurance Company.

Florida Standard Jury Instruction 404.08

ACCEPTED _____

REJECTED _____

MODIFIED _____

**PROPOSED JURY INSTRUCTION NO. 5
GREATER WEIGHT OF THE EVIDENCE DEFINED**

“Greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.

Florida Standard Jury Instruction 404.03

ACCEPTED _____

REJECTED _____

MODIFIED _____

**PROPOSED JURY INSTRUCTION NO. 6
INSURER’S BAD FAITH FAILURE TO PAY**

The first issue for your determination is whether American Home Assurance Company acted in bad faith in failing to pay Mr. Sebo’s claim. An insurance company acts in bad faith in failing to pay a claim when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward Sebo and with due regard for his interests.

Whether an insurer “acted fairly and honestly toward its insureds and with due regard for their interests” may include consideration of American Home’s diligence and thoroughness (or lack thereof) in investigating the facts specifically pertinent to coverage.

If the greater weight of the evidence does not support Mr. Sebo’s claim, your verdict should be for American Home Assurance Company. However, if the greater weight of the evidence does support Mr. Sebo’s claim, your verdict should be for Sebo. If you find for American Home Assurance Company you will not consider the matter of damages. But if you find for Mr. Sebo you should award him an amount of money that the greater weight of the evidence shows will fairly and adequately compensate him for his losses. You shall consider : any damages incurred by Mr. Sebo as a foreseeable result of American Home Assurance Company’s failure in good faith to pay Mr. Sebo’s claim.

Florida Standard Jury Instruction 404.4; Section 624.155 (8) Fla. Stat. (2020); *State Farm v. Laforet*, 658 So. 2d 55, 62-63 (Fla. 1995); *Home Ins. Co. v. Owens*, 573 So. 2d 343, 344 (Fla. 4th DCA 1990), *rev. den’d* 592 So. 2d 680 (Fla. 1991).

ACCEPTED _____

REJECTED _____

MODIFIED _____

PROPOSED JURY INSTRUCTION NO. 7

In determining whether an insurer has acted in bad faith, a totality of the circumstances approach must be used. While not an exhaustive list, you must consider what efforts or measures were taken by American Home Assurance Company to resolve the coverage dispute promptly or in such a way as to limit any potential prejudice to Mr. Sebo, the substance of the coverage dispute or the weight of legal authority on the coverage issue, and American Home's diligence and thoroughness in investigating the facts specifically pertinent to coverage. In determining whether American Home Assurance Company acted fairly and honestly towards Mr. Sebo and with due regard for his interests, you should consider these factors along with any others pertinent to your decision.

State Farm Mut. Auto. Ins. Co. v. Laforet, 685 So. 2d 55, 62-3 (Fla. 1995).

ACCEPTED _____

REJECTED _____

MODIFIED _____

**PROPOSED JURY INSTRUCTION NO. 8
GOOD FAITH DEFINED**

It is impossible to comprehensively define what may be good faith or its lack. Subterfuges and evasions, however, violate the obligation of good faith even if the insurance company believes its conduct to be justified. But the obligation goes further; bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. The obligation of good faith extends to the assertion, settlement and litigation of insurance disputes. The obligation is violated by dishonest conduct such as conjuring up a pretended dispute, or asserting an interpretation contrary to the insurer's own understanding of the facts, or falsification of facts.

2d Restatement of the Law, Contracts, Sections 205 a. and d.

APPROVED___

MODIFIED___

REJECTED___

PROPOSED JURY INSTRUCTION NO. 9
LEGAL CAUSE

Bad faith conduct is a legal cause of damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such damage, so that it can reasonably be said that, but for the bad faith conduct, the damage would not have occurred.

In order to be regarded as a legal cause of damage bad faith conduct need not be the only cause. Bad faith conduct may be a legal cause of damage even though it operates in combination with some other cause if the bad faith conduct contributes substantially to producing such the damage.

Bad faith conduct may also be a legal cause of damage even though it operates in combination with some other cause occurring after the bad faith conduct occurs if[such other cause was itself reasonably foreseeable and the bad faith conduct contributes substantially to producing such damage or damages was a reasonably foreseeable consequence of the bad faith conduct and the bad faith conduct contributes substantially to producing it.

Florida Standard Jury Instruction 404.06

ACCEPTED _____

REJECTED _____

MODIFIED _____

PROPOSED JURY INSTRUCTION NO. 10
VIOLATIONS OF FLORIDA'S UNFAIR CLAIM PRACTICES ACT

The next issue for your determination is whether American Home Assurance Company acted in bad faith towards Mr. Sebo by violating one or more provisions of the Unfair Claim Practices Act, including:

- a material misrepresentation made to Mr. Sebo for the purpose and with the intent of effecting payment of his claim under his insurance policy on less favorable terms than those provided in and contemplated by the policy;
- failing to adopt and implement standards for the proper investigation of claims;
- misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
- failing to acknowledge and act promptly upon communications with respect to claims;
- denying the claim without conducting a reasonable investigation based upon available information;
- Failing to promptly provide a reasonable explanation in writing to the insured of the basis in the insurance policy in relation to the facts or applicable law, for denial of a claim or for the offer of a compromise settlement; and/or,
- failing to properly notify its insureds of any additional information necessary for the processing of the claim.

If the greater weight of the evidence does not support all of Mr. Sebo's claims, your verdict should be for American Home Assurance Company. However, if the greater weight of the evidence does support one or more of Mr. Sebo's claims, your verdict should be for Mr. Sebo.

If you find for American Home Assurance Company you will not consider the matter of damages. But if you find for Mr. Sebo you should award him an amount of money that the greater weight of the evidence shows will fairly and adequately compensate him for his losses.

You shall consider any damages incurred by Mr. Sebo as a foreseeable result of American Home Assurance Company's violations of the Unfair Claim Practices Act.

Florida Standard Jury Instruction 404.8; Fla. Stats. §§ 624.155(1)(a)(1) and 626.9541(1)(i)(3)(a)

ACCEPTED _____

REJECTED _____

MODIFIED _____

**PROPOSED JURY INSTRUCTION NO. 11
CONTINUING DUTY**

An insurance company has a continuing duty to adjust a claim and evaluate coverage in good faith, even after litigation is brought by or against the insurer by the insured. That duty of good faith continues through the conclusion of the litigation until the claim is paid or a final judgment is entered.

Tristar Lodging, Inc. v. Arch Specialty Ins. Co., 434 F. Supp. 2d 1286, 1299 (Fla. M.D. June 1, 2006); Depositions of Richmond (AIG expert on claims handling) at Pg. 61; AIG Corporate Representative depositions (O'Brien, 3/18/2021, Pgs. 118-119; Poux Pgs. 34 & 35; Piotrowski Pgs. 31-33; Jones Pg. 29; Cuzzola Pg. 30; Spinella Pgs. 25-26; Flaherty Pgs. 44-45; Home Ins. Co. v. Owens, 573 So.2d 343, 344 (Fla. 4th DCA 1990); T.D.S. v. Shelby Mutual Ins. Co., 760 F.2d 1520, 1527 (11th Cir. 1985); White v. Western Title Ins. Co., 40 Cal. 3d 870 (Cal. 1985)(leading case nationally)

ACCEPTED _____

REJECTED _____

MODIFIED _____

PROPOSED JURY INSTRUCTION NO. 12
PEREMPTORY INSTRUCTION – WHAT HAS ALREADY BEEN DETERMINED

Prior to this bad faith action, a jury rendered a verdict in favor of Mr. Sebo and against American Home Assurance Company, later reduced to a judgment in the amount of \$ 8,070,000.00. This Court found that American Home Assurance Company sold Mr. Sebo an all-risk insurance policy, the policy included coverage for loss independently caused by covered wind and rain events and construction defects, and that American Home Assurance Company had breached the insurance policy by failing to pay Mr. Sebo's claim. That result was affirmed on appeal to the Florida Supreme Court. An Amended Final Judgment was entered in Mr. Sebo's favor after the appeal concluded.

ACCEPTED _____

REJECTED _____

MODIFIED _____

**PROPOSED JURY INSTRUCTION NO. 13
PUNITIVE DAMAGES**

Punitive damages are warranted if you find by clear and convincing evidence that:

The acts giving rise to the violation(s) occurred with such frequency as to indicate a general business practice; and,

These acts were willful, wanton, and malicious, or in reckless disregard for the rights of Mr. Sebo.

“Clear and convincing evidence” differs from the “greater weight of the evidence” in that it is more compelling and persuasive. “Clear and convincing evidence” is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue.

Florida Standard Jury Instruction 404.13

ACCEPTED _____

REJECTED _____

MODIFIED _____

**PROPOSED JURY INSTRUCTION NO. 14
CLOSING ARGUMENT**

That is the law you must follow in deciding this case. The attorneys for the parties will now present their final arguments. When they are through, I will have a few final instructions about your deliberations.

Florida Standard Jury Instruction 601.5

ACCEPTED _____

REJECTED _____

MODIFIED _____

PROPOSED JURY INSTRUCTION NO. 15
CLOSING INSTRUCTIONS

Members of the jury, you have now heard all the evidence, my instructions on the law that you must apply in reaching your verdict and the closing arguments of the attorneys. You will shortly retire to the jury room to decide this case. Before you do so, I have a few last instructions for you.

During deliberations, jurors must communicate about the case only with one another and only when all jurors are present in the jury room. You will have in the jury room all of the evidence that was received during the trial. In reaching your decision, do not do any research on your own or as a group. Do not use dictionaries, the Internet, or any other reference materials. Do not investigate the case or conduct any experiments. Do not visit or view the scene of any event involved in this case or look at maps or pictures on the Internet. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. Do not read, listen to, or watch any news accounts of this trial.

You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or electronic communication, such as a blog, twitter, e-mail, text message, or any other means. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. These communications rules apply until I discharge you at the end of the case.

If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the bailiff.

Any notes you have taken during the trial may be taken to the jury room for use during your discussions. Your notes are simply an aid to your own memory, and neither your notes nor those of any other juror are binding or conclusive. Your notes are not a substitute for your own

memory or that of other jurors. Instead, your verdict must result from the collective memory and judgment of all jurors based on the evidence and testimony presented during the trial.

At the conclusion of the trial, the bailiff will collect your notes, which will be immediately destroyed. No one will ever read your notes.

In reaching your verdict, do not let bias, sympathy, prejudice, public opinion, or any other sentiment for or against any party influence your decision. Your verdict must be based on the evidence that has been received and the law on which I have instructed you.

Reaching a verdict is exclusively your job. I cannot participate in that decision in any way and you should not guess what I think your verdict should be from something I may have said or done. You should not think that I prefer one verdict over another. Therefore, in reaching your verdict, you should not consider anything that I have said or done, except for my specific instructions to you.

Pay careful attention to all the instructions that I gave you, for that is the law that you must follow. You will have a copy of my instructions with you when you go to the jury room to deliberate. All the instructions are important, and you must consider all of them together. There are no other laws that apply to this case, and even if you do not agree with these laws, you must use them in reaching your decision in this case.

When you go to the jury room, the first thing you should do is choose a presiding juror to act as a foreperson during your deliberations. The foreperson should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are

convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

I will give you a verdict form with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the form carefully. You must consider each question separately. Please answer the questions in the order they appear. After you answer a question, the form tells you what to do next. I will now read the form to you: (read form of verdict)

Your verdict must be unanimous, that is, your verdict must be agreed to by each of you. When you have agreed on your verdict finished filling out the forms, your foreperson must write the date and sign it at the bottom and return the verdict to the bailiff.

If any of you need to communicate with me for any reason, write me a note and give it to the bailiff. In your note, do not disclose any vote or split.

You may now retire to decide your verdict.

Florida Standard Jury Instruction 700

ACCEPTED _____

REJECTED _____

MODIFIED _____

**PROPOSED JURY INSTRUCTION NO. 16
INSTRUCTION UPON DISCHARGE OF THE JURY**

Ladies and gentlemen on behalf of the parties, lawyers and the people of the State of Florida, I wish to thank you for your time and consideration of this case.

I also wish to advise you of some very special privileges enjoyed by jurors.

No juror can be required to talk about the discussions that occurred in the jury room, except by court order. For many centuries, our society has relied upon juries for consideration of difficult cases. We have recognized for hundreds of years that a jury's deliberations, discussions, and votes should remain their private affair as long as they wish it. Therefore, the law gives you a unique privilege not to speak about the jury's work.

The lawyers and their representatives are not permitted to initiate any communication with you about the trial. However, you may speak to the lawyers or anyone else about the trial. You also have the right to refuse to speak with anyone. A request may come from those who are simply curious, or from those who might seek to find fault with you. It will be up to you to decide whether to preserve your privacy as a juror.

Florida Standard Jury Instruction 801.4

ACCEPTED _____

REJECTED _____

MODIFIED _____

2

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
COLLIER COUNTY, FLORIDA
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JOHN ROBERT SEBO, individually and as
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Defendants.

_____ /

SEBO'S PROPOSED VERDICT FORM

VERDICT FORM

We, the jury, return the following verdict:

1. Did the Defendant, American Home Assurance Company, fail in good faith to pay Mr. Sebo's claim under his insurance policy, by not paying or timely paying which failure was a legal cause of injury or damage to Mr. Sebo?

YES _____ NO _____

If your answers to question 1 is NO, then your verdict is for American Home on Mr. Sebo's claim that American Home failed in good faith to pay his claim and you should proceed to answer question 3 and follow the instructions for completing the rest of this verdict.

If your answer to question 1 is YES, then please answer question 2.

2. What is the amount of compensatory damages you award to Mr. Sebo with regard to the failure to pay claim? \$ _____ .

Please Answer Question 3.

3. Did the Defendant, American Home Assurance Company, violate any of the following provisions of the Florida Unfair Claims Settlement Practices Act, which violations were a legal cause of loss, injury or damage to Mr. Sebo:

(a) Making a material misrepresentation to Mr. Sebo for the purpose and with the intent of affecting payment of his claim on less favorable terms than those provided in, and contemplated by, the insurance policy?

YES _____ NO _____

(b) Failing to adopt and implement standards for the proper investigation of claims?

YES _____ NO _____

(c) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue?

YES _____ NO _____

(d) Failing to acknowledge and act promptly upon communications with respect to claims?

YES _____ NO _____

(e) Failing to promptly provide a reasonable explanation in writing to Mr. Sebo of the basis in the insurance policy, in relation to the facts or applicable law for the offer of a compromise payment?

YES _____ NO _____

(f) Failing to promptly notify Mr. Sebo of any additional information necessary for the processing of his claim?

YES _____ NO _____

(g) Failing to clearly explain the nature of the requested information and the reasons why such information is necessary?

YES _____ NO _____

If you answered YES to any sub-part of question 3, then answer question 4.

4. What is the total amount of compensatory damages you award to Mr. Sebo due to American Home's violations of Florida law?

\$ _____

5. If you award compensatory damages in response to questions 2 or 4 or both, state the date that you determine money should have been paid by American Home.

Date: _____

If the answers to question 1 and all sub-parts of 3 are NO, date and sign your verdict and go no further. However, if you answered question 1 or any sub-part of question 3 YES, answer question 6.

6. Were the acts giving rise to the violation(s) committed by American Home with such frequency as to indicate a general business practice by clear and convincing evidence?

YES _____ NO _____

If you answered NO to question 6 and all parts of question 3, do not answer questions 7 or 8. If you answered YES to question 6 or to question 3(a), answer question 7 and read the instructions before question 8.

7. Were the acts giving rise to any of the violations for which you answered YES to question 6 committed by American Home willfully, wantonly, and maliciously, **OR** in reckless disregard for the rights of Mr. Sebo by clear and convincing evidence?

YES _____ NO _____

If your answer to question 7 is YES, you may consider question 8 and award punitive damages.

8. What is the total amount of punitive damages you award?

\$ _____

SO SAY WE ALL, this _____ day of _____, 2022.

FOREMAN/FOREWOMAN