

FINAL INSTRUCTIONS

LORDAND * TAYLOR, P.C. VS. BLOOMINGALE INSURANCE CO.
STATE OF COLUMBIA, DISTRICT COURT / NO. 101-001
(MAY BE CONSULTED DURING DELIBERATIONS)

1. You must determine two questions. The first is whether Lordand * Taylor made a misrepresentation on their application. The second question is whether that misrepresentation was material to Bloomingdale's decision to write their policy.
2. A material misrepresentation is determined by whether the insurer in good faith would either not have issued the policy, or would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer.
3. Where an insurer seeks to avoid a policy based on a material misrepresentation, this assertion is in the nature of an affirmative defense. The burden of proof is on the insurer and it is judged by a preponderance of the evidence. The term "preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force, is more likely true than it is not true.
4. If you find by a preponderance of the evidence in this case either that there was no misrepresentation, or that it was not material, then you are to award Plaintiff damages in the amount of its economic loss proximately resulting from the insurer's conduct. If you find there was a misrepresentation, and it was material, then your verdict should be for the Defendant and you should not consider damages at all.