IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

JULIA J. JAEKE, formerly known as JULIA J. ANSON, Plaintiff,	Case No. CI01-151
vs.	**JOURNAL ENTRY ON TRIAL**
EMC INSURANCE COMPANIES, an Iowa corporation, Defendant.	

DATE OF TRIAL: December 3-5, 2002.

APPEARANCES:

For plaintiff: James D. Gotschall with plaintiff.

For defendants: Mark D. Fitzgerald with Robert Wetzel, corporate representative.

SUBJECT: Jury Trial.

PROCEEDINGS:

Tuesday, December 3, 2002:

The clerk displayed the juror orientation video. After introductory comments, the court administered the examination oath to the jury panel. The clerk drew the names of 18 prospective jurors. The court conducted voir dire examination. During the court's examination and without objection, the court excused one prospective juror for cause and the clerk drew a replacement name and the court examined the replacement panel member. The court admonished the panel and declared the mid-morning recess.

Counsel for plaintiff then conducted voir dire examination. The plaintiff passed the panel for cause. Counsel for defendant then conducted voir dire examination. The defendant passed the panel for cause. Counsel for plaintiff and counsel for defendant exercised peremptory challenges to the panel of 18 prospective jurors. The court administered the trial oath to and admonished the trial jury of 12 persons, consisting of:

[deleted] [deleted] [deleted]

The court discharged the balance of the panel and briefly paused to allow those wishing to leave an opportunity to exit. The court gave preliminary instructions to the jury. The court admonished the jury and recessed the trial for lunch.

Following the lunch recess, the jury returned. Counsel for plaintiff presented an opening statement. Counsel for defendant presented an opening statement. The plaintiff adduced evidence. The plaintiff, Julia J. Jaeke, testified upon oath. During direct examination, the court admonished the jury and recessed the trial briefly. Counsel resumed and concluded the examination. Steven L. Anson, Patricia S. Anson, and Quentin Jaeke testified upon oath. The court admonished and excused the jury for the day, and recessed the trial until Wednesday, December 4, 2002, at 9:00 a.m.

Wednesday, December 4, 2002:

Prior to resumption of trial, the court disclosed to both counsel in chambers an unsolicited contact between the trial judge and juror Jean M. Waldo, and offered the opportunity to interview the juror on the record regarding the content of the contact. Both counsel declined. The jury returned and the trial resumed with all counsel and parties or party representatives present. Both counsel waived further hearing on the matter discussed in chambers. The plaintiff's evidence resumed. Dr. Edward M. Schima testified upon oath. The court admonished the jury and recessed the trial for the mid-morning break.

Following the recess, Dr. Britt A. Thedinger testified upon oath. At the end of the direct examination, the court admonished the jury and recessed the trial for lunch.

Following the lunch recess, counsel resumed and concluded the examination. Barton W. Hultine testified upon oath. At the end of direct examination, the court admonished the jury and briefly recessed the trial. After the recess, the court permitted the plaintiff to reopen the direct examination of Hultine, and counsel then concluded the examination. Roger Mays testified upon oath. The court admonished the jury and briefly recessed the trial. Following the recess, Scott Cavin, Karen Scott, and Gary Hostert testified upon oath.

The court admonished the jury and recessed the trial to Thursday, December 5, 2002, at 9:00 a.m. Both counsel joined the court in chambers for an informal instruction conference. The court then excused counsel for the day.

Thursday, December 5, 2002:

The trial resumed with all counsel and parties or party representatives present. Dr. Richard Fitch testified upon oath. Plaintiff's counsel read the stipulations from the pretrial order to the jury. The plaintiff rested. In a brief bench conference counsel reported that there were no motions and the trial proceeded without recess. The defendant adduced evidence. Dr. Eli Chesen testified upon oath. During direct examination, the court admonished and excused the jury for the mid-morning recess. Counsel resumed and concluded the examination. The defendant rested. The court admonished the jury and briefly recessed the trial. The plaintiff rested on rebuttal without rebuttal evidence. The court admonished the jury and excused the jury for lunch.

In the absence of the jury, both counsel waived any further informal instruction conference in chambers. A formal instruction conference was held in open court. There were no motions at the close of all evidence. The court's proposed instructions Nos. 1 through 9, inclusive, and two proposed verdict forms were considered. The plaintiff did not object to any of the instructions or the verdict form, and has no additional requested instructions. The defendant did not object to any of the instructions or the verdict form, except the last clause of Instruction No. 7A(2) regarding future health care expenses to which the defendant objected. Arguments were heard or waived. The objection was overruled and the proposed instruction will be given. The defendant did not request any additional instructions. Time limits of 60 minutes per side for closing arguments, with the limitation that no more time may be consumed in rebuttal than was consumed in the initial portion of the plaintiff's closing argument.

All counsel stipulated that counsel may be excused during jury deliberations, and that in their absence any written communication may take place between the court and the

jury and further written instructions may be given, and the verdict may be received in the absence of counsel and the absence of the parties without further notice. The court approved the stipulation, but will nevertheless attempt to reach counsel in the event of questions or a verdict. The court recessed the trial for lunch.

Following the lunch recess, the jury returned, with all counsel and parties or party representatives present. Counsel for plaintiff presented closing argument. Counsel for defendant presented closing argument. Counsel for plaintiff presented rebuttal argument. The written instructions were read to the jury. The cause was submitted for commencement of deliberations at 2:39 p.m. The jury retired to the jury room.

The court received a written communication from the jury regarding their intention to work after 5:00 p.m., which was duly filed by the clerk. The court took no further action at that time.

The bailiff presented a written question from the jury, which was duly filed by the clerk. The court informally consulted with both counsel by telephone, and developed a response to the question which was approved by both counsel telephonically. The court held a formal instruction conference on the record with no appearances to report the same for the record, pertaining to the court's Instruction No. 10. At 5:32 p.m., the jury returned without any parties or counsel present, and Instruction No. 10 was read to the jury and the cause resubmitted at 5:34 p.m. The bailiff again conducted the jury to the jury room.

At 6:00 p.m., in the absence of any parties, party representatives, or counsel, the jury returned and announced that it had reached a verdict. The clerk filed and read aloud the verdict form in open court, wherein the jury rendered its verdict for the plaintiff in the amount of $767,369.49. The court inquired if it was their unanimous verdict, and all 12 jurors responded affirmatively by show of hands. The court dispenses with further polling of the jury in the absence of counsel or parties. The verdict was accepted by the court. The jury was discharged with the thanks of the court. Pursuant to paragraph 10A(4)(d) of

the pretrial order, entry of judgment was deferred until a further hearing on the determination of costs and application of credits.

ORDER: IT IS THEREFORE ORDERED that:

1. The jury verdict is accepted and the jury is discharged with the thanks of the court.

2. Entry of judgment upon the verdict is deferred until after a hearing on the determination of costs and application of credits, which shall be held on **Monday, December 23, 2002**, at **10:30 a.m.**, or as soon thereafter as the same may be heard. No more than 20 minutes is reserved for such hearing, and if counsel require a longer hearing or desire to submit briefs on any issues to be determined upon such hearing, appropriate motion for continuance or rescheduling shall be filed at least eight days prior to such hearing date in order to provide for sufficient time or establish a briefing schedule to be accomplished prior to hearing.

Signed at **O'Neill**, Nebraska, on **December 5, 2002**;
DEEMED ENTERED upon file stamp date by court clerk.
If checked, the court clerk shall:

☎ Mail a copy of this order to all counsel of record and any pro se parties.
Done on _____, 20_____ by _____.

☎ If not already done, immediately transcribe trial docket entry dictated.
Done on _____, 20_____ by _____.

BY THE COURT:

_____
William B. Cassel
District Judge

Mailed to: