

Members of the jury, you have seen and heard all of the evidence and the arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must now allow sympathy, bias, prejudice, fear, or public opinion to influence you. The parties to this case and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law that I give you, and reach a just verdict regardless of the consequences.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be. It is not my function to determine the facts in the case. That function belongs to you.



You should consider and decide this case as a lawsuit between persons of equal standing in the community and holding the same or similar stations in life. Each party is entitled to the same fair consideration. A corporation is entitled to the same fair consideration as a private individual. All persons and corporations stand equal before the law and are to be dealt with as equals in a court of justice.

Plaintiff Timothy Brennan's insurance policy was issued by defendant Paul Revere Life Insurance Company. In dealing with Brennan's claim on the policy, Paul Revere used persons employed by other corporations, including those of Provident Life and Accident Insurance Co., Provident Companies, Inc., and UnumProvident Corporation. The actions and omissions of employees of Provident Life and Accident Insurance Co., Provident Companies, Inc., and UnumProvident Corporation in dealing with Brennan's claim are to be considered as the actions and omissions of defendant Paul Revere Life Insurance Company.

As I stated, it is your duty to determine the facts. In determining the facts, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, testimony from depositions that was read or played to you, the exhibits admitted in evidence, and stipulations. A stipulation is an agreement between both sides that certain facts are true.

Certain testimony was presented to you by the reading of depositions and, in some instances, by the showing of videotaped depositions. Deposition testimony is entitled to the same consideration as testimony that was given in court. You are to judge its truthfulness and accuracy, and you are to weigh and consider it, insofar as possible, in the same way as if the witnesses had been present and testified from the witness stand.

Certain things are not evidence. I will list them for you.

First, any testimony or exhibits that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purpose of these statements and arguments is to discuss the evidence and the issues in the case. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

Some of you may have heard the phrases “circumstantial evidence” and “direct evidence.”

Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. Circumstantial evidence is indirect evidence, in other words it is proof of one or more facts that point to the existence or non-existence of another fact in issue. You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give to any evidence in the case.

You are to consider all of the evidence in determining your verdict. However, that does not mean that you must accept all of the evidence as truthful or accurate.

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we sometimes look at one fact and conclude from that fact that another fact exists. In law we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

In determining the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. You will also have to decide what weight, if any, to give to the testimony of each witness. In considering the testimony of any witness, you may take into account:

- the opportunity and ability of the witness to see or hear or know the things that the witness testified about;
- the witness's memory;
- the witness's intelligence;
- any interest the witness may have in the outcome of the case, and any bias or prejudice the witness may have;
- the witness's manner while testifying;
- the reasonableness of the witness's testimony in light of all the evidence in the case; and
- any other factors that bear on believability.

The weight of the evidence as to a particular fact does not necessarily depend upon the number of witnesses who testify. You may find the testimony of a smaller number of witnesses to be more persuasive than that of a larger number.

A witness may be discredited or “impeached” by contradictory evidence; by, among other things, a showing that he or she testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’s testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’s testimony is whole, in part, or not at all, and how much weight to give to that testimony.

It is proper for an attorney to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney does not, by itself, reflect negatively on the truth of the witness's testimony.

You have heard witnesses give opinions about matters requiring special knowledge or skill. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

Plaintiff Timothy Brennan claims that his loss of peripheral vision has rendered him unable to perform the important duties of his occupation as a broker on the floor of the Chicago Board of Trade and that, as such, he is “totally disabled” and therefore entitled to benefits under his contract, namely the policy of insurance that he purchased from defendant Paul Revere Life Insurance Company. He contends that Paul Revere breached the contract by refusing to pay benefits as provided by the insurance policy beginning in February 1999 and that by its conduct Paul Revere has repudiated the contract.

Defendant Paul Revere Life Insurance Company denies that Brennan is unable to perform the important duties of his occupation and thus denies that he is “totally disabled.” It denies that Brennan is entitled to benefits under the insurance policy. Paul Revere also denies that it has repudiated the insurance policy in any way.

When I use the term “contract,” I mean the legally enforceable policy of insurance between Brennan and Paul Revere.

The contract provides that Brennan will be paid benefits as specified under the contract if he satisfies the definition of “Total Disability.” The contract also provides as follows:

“Total Disability” means that because of Injury or Sickness you are unable to perform the important duties of your occupation.

\* \* \*

“Your occupation” means the occupation you are regularly engaged in at the time you become disabled.

In a civil lawsuit like this one, the burden is on the plaintiff to prove every essential element of his claim by a “preponderance of the evidence.”

A preponderance of the evidence simply means evidence that persuades you that the plaintiff’s claim is more likely true than not true.

In deciding whether any fact has been proven by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have provided them.

### **Brennan's claim against Paul Revere**

In order to prevail on his claim against Paul Revere, Brennan has the burden of proving each of the following propositions by a preponderance of the evidence:

First, that he was "totally disabled" as defined by the contract; and

Second, that Paul Revere failed to pay him the benefits owed to him under the contract.

If you find from your consideration of all the evidence that each of these propositions has been proved by a preponderance of the evidence, then your verdict should be for Brennan and against Paul Revere.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved by a preponderance of the evidence, then your verdict should be for Paul Revere and against Brennan.

In order for you to determine whether or not Brennan is totally disabled within the meaning of the insurance policy, you must determine whether he can perform in the usual and customary manner the important duties of his occupation as a broker on the floor of the Chicago Board of Trade.

Brennan's disability must be such as to render him unable to perform any one of the important duties of his occupation in the usual and customary way. A disability can be "qualitative" or "quantitative." A "qualitative" disability exists when a person can no longer physically perform an important job duty. A "quantitative" disability exists when a person, though still able to perform the tasks of the job, cannot do so in a manner sufficient to continue working at his regular occupation.

The fact that a person can trade by the use of a computer is a different occupation from that of a floor broker and is not relevant to your consideration as to whether Brennan can perform the important duties of the job of a floor broker.

## **Damages**

If you decide for Brennan and against Paul Revere, then you must determine the amount of damages to which Brennan is entitled.

If you decide for Paul Revere and against Brennan, then you will have no occasion to consider the question of damages.

You should not interpret the fact that I am giving you instructions about damages as an indication in any way that I believe that Brennan should, or should not, win this case. That is your function, and your alone. I am instructing you on damages only so that you will have guidance in the event that you find for Brennan on his claim.

If you decide for Brennan and against Paul Revere, you must determine the amount of money that will reasonably compensate Brennan for all losses naturally arising from the breach of contract. In calculating Brennan's damages, you should determine that sum of money that will put him in as good a position as he would have been in if both he and Paul Revere had performed all of their obligations under the contract.

The elements of damages claimed by Brennan are the following:

1. Monthly disability benefits for each month from the date that Paul Revere ceased paying benefits to Brennan through the date of your verdict, with the appropriate cost of living adjustments as allowed for under the contract.
2. An amount equal to the present value of the disability benefits that Brennan would be reasonably certain to receive under the insurance policy from the date of your verdict through the year in which Brennan would reach his 65th birthday, or his life expectancy, whichever is less.

Whether any of these elements of damages have been proven is for you to determine.

You may award Brennan damages for future benefits under the insurance policy (item 2 above) only if you find that Brennan has proved both of the following propositions by a preponderance of the evidence:

First, that in the future he will be unable to perform the important duties of his occupation as a bond trader on the floor of the Chicago Board of Trade; and

Second, that Paul Revere has, without justification, positively and unequivocally

manifested its intention not to comply with its obligations under the insurance policy in the future.

According to a table of mortality in evidence, the life expectancy of a 42 year old male is 35 more years. This figure is not conclusive. It is the average life expectancy of males who have reached the age of 42 years. It may be considered by you in connection with other evidence relating to the probable life expectancy of the plaintiff in this case, including evidence of his occupation, health, habits, and other activities, bearing in mind that some persons live longer and some persons live less than average.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

A form of verdict as been prepared for you. [Explain the verdict form.]

When you have reached unanimous agreement on the verdict, fill out the verdict form, sign and date it, and advise the court security officer that you have reached a verdict.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer.

If any communication is made, it should not indicate your numerical division.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs as to the weight or effect of evidence solely because of the opinions of your fellow jurors or solely for the purpose of returning a unanimous verdict.

All of you should give fair consideration to all of the evidence and should deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

**VERDICT FORM**

We, the jury, unanimously find as follows regarding the claim of plaintiff Timothy Brennan against defendant Paul Revere Life Insurance Company (check one and only one):

For plaintiff Timothy Brennan: \_\_\_\_\_

For defendant Paul Revere: \_\_\_\_\_

We award Brennan damages as follows (to be answered only if you checked “for plaintiff Timothy Brennan”):

- 1. Disability benefits through the date of the verdict: \$ \_\_\_\_\_
- 2. Future disability benefits: \$ \_\_\_\_\_
- TOTAL: \$ \_\_\_\_\_

_____	_____
Foreperson	
_____	_____
_____	_____
_____	_____
_____	_____

Date: \_\_\_\_\_, 2002