

Judge Elaine E. Bucklo
United States District Court
Northern District of Illinois

General Civil Jury Instructions

Now that you have heard all of the evidence and the argument of counsel, it becomes my duty to give you the instructions of the Court concerning the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the Court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in the case.

In deciding the facts of this case you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the Court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action 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 trial at your hands [, and a corporation [city, unit of government] is entitled to the same fair trial as an individual]. The law respects all persons equally, and all persons [, including such corporations,] stand equal before the law and are to be dealt with as equals in a court of justice.

In determining the facts, you must consider only the evidence I have admitted in the case. Any evidence to which I sustained an objection or that I ordered stricken must be disregarded.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice.

In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

The evidence from which you are to decide the facts consists of:

1. the sworn testimony of witnesses, on both direct and cross-examination;
2. the exhibits which have been received into evidence;
and
3. any facts to which all the lawyers have agreed or stipulated.

While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony as you feel are justified in the light of common experience. In other words, you may make deductions and reach

conclusions which reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case.

In determining any fact in issue you may consider the testimony of all witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

There are two types of evidence: direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of an event, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances that tend to show whether or not an asserted fact is true. The law makes no distinction between the weight to be given either direct or circumstantial evidence.

Any notes that you may have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

Anything you may have seen or heard when the Court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

In considering the evidence in this case, you are not required to set aside your own observation and experience in the affairs of life, but you have a right to consider all the evidence in the light of your own observation and experience in the affairs of life.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by evidence to the contrary of the testimony given.

You may accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of one or a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

The test is not which side brings the greater number of witnesses, or presents the greater quantity of evidence; but which witness, and which evidence, appeals to your minds as being most accurate, and otherwise trustworthy.

A witness may be discredited or "impeached" by contradictory evidence, by 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, or has failed to say or do something, that is inconsistent with the witness' present testimony.

If you believe that any witness has been so impeached, then it remains your exclusive province to give testimony of that witness such credibility or weight, if any, as you may think it deserves.

During the trial of this case, certain testimony has been read to you by way of deposition, consisting of sworn written answers to questions asked of the witness in advance of the trial by one or more of the attorneys to the parties of the case. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand may be presented in writing under oath, in the form of a deposition. Such testimony is entitled to the same consideration, and is to be judged as to credibility, and weighed, and otherwise considered by the jury, insofar as possible, in the same ways as if the witness had been present, and had testified from the witness stand.

You have heard testimony of expert witnesses. This testimony is admissible where the subject matter involved requires knowledge, special study, training, or skill not within ordinary experience, and the witness is qualified to give an expert opinion.

However, the fact that an expert has given an opinion does not mean that it is binding upon you or that you are obligated to accept the expert's opinion as to the facts. You should assess the weight to be given to the expert opinion in the light of all the evidence in this case.

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of [his] claim by a preponderance of the evidence. If the proof should fail to establish any essential element of plaintiff's claim by a preponderance of the evidence in the case, you should find for the defendant as to that claim.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in you a belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, and proof to an absolute certainty is seldom possible in any case.

Nothing that I have said in these instructions or during the trial and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

When I use the expression "proximate cause," I mean any cause which, in natural or probable sequence, produced the injury complained of. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury.

If the plaintiff has proven [his] claim against the defendant by a preponderance of the evidence, you must determine the damages to which the plaintiff is entitled. You should not interpret the fact that I have given instructions about the plaintiff's damages as an indication in any way that I believe that the plaintiff should, or should not, win this case. It is your task first to decide whether the defendant is liable. I am instructing you on damages only so that you will have guidance in the event you decide that the defendant is liable and that the plaintiff is entitled to recover money from the defendant.

In order to be recoverable, damages must be actual, and neither speculative, remote, nor uncertain. However, mere difficulty in ascertaining the amount of damages is not fatal. Mathematical precision in fixing the exact amount of damages is not required.

If you find that the defendant is liable to the Plaintiff, then you must determine an amount that is fair compensation for all of the plaintiff's damages. These damages are called compensatory damages. The purpose of compensatory damages is to make the plaintiff whole -- that is, to compensate the plaintiff for the damage that the plaintiff has suffered. Compensatory damages are not limited to income the plaintiff may have lost. If you find for the plaintiff, [he] is entitled to compensatory damages for any pain and suffering, emotional distress, mental anguish, inconvenience and loss of enjoyment of life caused by the wrongful conduct of the defendant.

You may award compensatory damages only for injuries that the plaintiff proves were proximately caused by the defendant's wrongful conduct. The damages that you award must be fair compensation for all of the plaintiff's damages, no more, no less. Damages are not allowed as a punishment and cannot be imposed or increased to penalize the defendant. You should not award compensatory damages for speculative injuries, but only for those injuries which the plaintiff has actually suffered.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guess work. On the other hand, the law does not require that the plaintiff prove the amount of [his] losses

with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate for the facts and circumstances in the evidence.

If you find that the defendants or any of them are liable for the plaintiff's injuries, you must award [him] the compensatory damages that [he] has proven. You also may award punitive damages, if the plaintiff has proved that all or any of the defendants acted with evil motive or intent or their conduct involved reckless or callous indifference to plaintiff's rights.

If you determine that the defendant's conduct was so shocking and offensive as to justify an award of punitive damages, you may exercise your discretion to award those damages. In making any award of punitive damages, you should consider that the purpose of punitive damages is to punish a defendant for shocking conduct, and to deter the defendant and others from engaging in similar conduct in the future. The law does not require you to award punitive damages, however, if you decide to award punitive damages, you must use sound reason in setting the amount of the damages. The amount of an award of punitive damages must not reflect bias, prejudice, or sympathy toward any party. However, the amount can be as large as you believe necessary to fulfill the purposes of punitive damages. You may consider the financial resources of the defendant in fixing the amount of punitive damages and you may impose punitive damages against one or more of the defendants, and not others, or against more than one defendant in different amounts.

You must not award compensatory damages more than once for the same injury. For example, if the plaintiff prevails on two claims and establishes a dollar amount for [his] injuries, you must not award [him] any additional compensatory damages on each claim. The plaintiff is only entitled to be made whole once, and may not recover more than [he] has lost. Of course, if different injuries are attributed to the separate claims, then you must compensate the plaintiff fully for all of [his] injuries.

With respect to punitive damages, you may make separate awards on each claim that plaintiff has established.

You may impose damages on a claim solely upon the defendant or defendants that you find are liable on that claim. Although there are eight defendants in this case, it does not necessarily follow that if one is liable, all or any of the others also are liable. Each defendant is entitled to fair, separate and individual consideration of [his] case without regard to your decision as to the other defendants. If you find that only one defendant is responsible for a particular injury, then you must award damages for that injury only against that defendant.

You may find that more than one defendant is liable for a particular injury. If so, the plaintiff is not required to establish how much of the injury was caused by each particular defendant whom you find liable. Thus, if you conclude that the defendants you find liable acted jointly, then you may treat them jointly for purposes of calculating damages. If you decide that

two or more of the defendants are jointly liable on a particular claim, then you may simply determine the overall amount of damages for which they are liable, without determining individual percentages of liability.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in court. Forms of verdict have been prepared for your convenience.

You will take these forms to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in and date and each of you will sign the form which sets forth the verdict upon which you unanimously agree; and then return with your verdict to the courtroom.

If it becomes necessary during your deliberations to communicate with the Court, you may give a note to the Court security officer signed by your foreperson or by one or more members of the jury. During deliberations, no member of the jury should attempt to communicate with the Court by any means other than a signed writing, and the Court will not communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in court.

You will note from the oath about to be taken by the marshal that he, too, as well as all other persons, is forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

The verdict must represent the considered judgment of each juror. Your verdict, whether it be for the plaintiff or defendant, 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 opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

All [eight] of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

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