MAGISTRATE JUDGE GABRIEL A. FUENTES
219 South Dearborn Street
Chicago, IL 60604

Courtroom: 1838
Chambers: 1828

Telephone: (312) 435-7570
Fax: (312) 777-3850

STANDARD FINAL JURY INSTRUCTIONS

The following standard instructions should be used in all civil cases in which they are appropriate. Any objections to any of these instructions, and any requests for variation, should be brought to the Court's attention at or before the final pretrial conference.

Court's Instruction No. 1
The Functions of the Court and the Jury

Members of the jury, you have seen and heard all of the evidence, and you will soon hear the arguments of the attorneys. Now I will instruct you on the law that applies to this case. The instructions I am about to give you are in writing, and you will have them in the jury room when you discuss the case in your deliberations. You also each have a copy in front of you now. That may help you follow along. But read with me, do not read ahead.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this 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. 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. All of the instructions of the law given to you by the Court – those given to you at the beginning of the trial, those given to you during the trial, if any, and these final instructions – must guide and govern your deliberations. Each of the instructions is important, and you must follow all of them. You are not to single out one instruction alone as stating the law but must consider the instructions as a whole.

Counsel quite properly may refer to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you are, of course, to be governed by the Court's instructions.

During the course of trial it often becomes the duty of counsel to make objections and for me to rule on them in accordance with the law. The fact that counsel made objections should not influence you in any way. Nor should the nature or manner of my ruling on any objection influence you in any way.

Nothing I say in these instructions, and nothing I said or did during trial, is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts. That function belongs to you.

You must perform your duties as jurors fairly and impartially. In reaching your verdict, you must not allow sympathy, bias, prejudice, fear or public opinion to influence you for one party or against another. You must not be influenced by any person's race, color, religion, national ancestry or sex. Your verdict must be based on evidence and not upon speculation, guess or conjecture. All parties expect that you will carefully and impartially consider all of the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

Court's Instruction No. 2

You should consider and decide this case as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. A [corporation, city or unit of government] is entitled to the same fair trial as a private individual. All persons, [including corporations, city or unit of government], stand equal before the law, and are to be dealt with as equals in a court of justice.

[When a [corporation, city or unit of government] is involved, of course, it may act only through natural persons as its agents or employees; and, in general, any agent or employee of a [corporation, city or unit of government], may bind the corporation by his or her acts and declarations made while acting within the scope of his or her authority delegated to him or her by the [corporation, city or unit of government], or within the scope of his or her duties as an employee of the [corporation, city or unit of government].]

[Bracketed portions to be given where appropriate.]

Court's Instruction No. 3
The Evidence

As stated earlier, it is your duty to determine the facts, and in so doing, you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses, regardless of who may have called them to testify; sworn testimony read to you from depositions, regardless of which side offered it; the exhibits admitted in the record, regardless of who may have produced them; and any stipulated or admitted facts. A stipulation is a statement of fact agreed to between the parties, and you must regard stipulated facts as true.

[I have taken judicial notice of certain facts that may be regarded as matters of common knowledge. You are required to accept these facts as proved.]

[During the trial, certain testimony was presented to you by the reading of a deposition. This testimony is entitled to the same consideration as testimony that was given in court by a witness in person. 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 witness giving the deposition had been present and testified from the witness stand.]

[During the trial, I explained to you that certain evidence was being admitted for a limited purpose only. You must consider that evidence only for the limited purpose, and for no other.]

[Bracketed portions to be given where appropriate.]

Court's Instruction No. 4
What is Not Evidence

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

First, "evidence" does not include any testimony or documents as to which I sustained an objection, and it does not include any testimony or documents ordered stricken by the court. None of that information is "evidence" in this case, and you must completely disregard it.

Second, whenever I have sustained an objection to a question addressed to a witness, the jury must disregard the question entirely, and may draw no inference from the wording of it, nor speculate as to what the witness would have said if he or she had been permitted to answer the question.

Third, anything you may have seen or heard outside the courtroom is not evidence, and also must be entirely disregarded. [This includes any press, radio, internet, or television reports that you may have seen or heard. Such reports are not evidence, and your verdict must not be influenced in any way by such publicity.]

Fourth, statements, questions and objections by the lawyers are not evidence. Attorneys 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.

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

[Sixth, certain demonstrative exhibits have been shown to you. Those exhibits are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.]

[Bracketed portions to be given where appropriate.]

Court's Instruction No. 5
Direct and Circumstantial Evidence

Generally speaking, there are two kinds of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence – an example would be the testimony of a person who says what he or she personally saw, or did, or heard. The other type of evidence is indirect or circumstantial evidence. Circumstantial evidence is proof of one or more facts pointing to the existence or non-existence of another fact.

As an example, direct evidence that it is raining is testimony from a witness who says, "I was outside a minute ago and I saw it raining." Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

As a general rule, the law makes no distinction between the weight to be given to direct or circumstantial evidence, but requires that you consider both types of evidence in reaching your verdict. The law leaves it to you, the jury, to decide how much weight to give any evidence in the case.

Court's Instruction No. 6
Inferences

In our lives, we often look at one fact and conclude from that fact that another fact exists. In law we call this an "inference." While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in light of your own observations and experience in life. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in the case.

Court's Instruction No. 7
Deciding What to Believe

Now, I have said you must consider all the evidence. That does not mean you must accept all the evidence as true or accurate.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. "Credibility" is, simply put, believability.

An important part of your job is to make judgments about the testimony of each witness, and to decide whether you believe all, some, or none of that testimony, and how important that testimony was. In making those judgments, consider each witness's intelligence, motive and state of mind, and demeanor or manner while on the stand. Consider the witness's ability to observe the matters as to which the witness has testified, and whether the witness impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; an innocent misrecollection or failure of recollection is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

[An attorney has a right 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 and told him or her what he or she would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness.

[Bracketed portions to be given where appropriate.]

Court's Instruction No. 8
Deciding What Weight to Give to Evidence

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in evidence in the case.

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 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 testimony of a single witness which produces in your minds a belief in the likelihood of truth is sufficient for the proof of any fact, and would justify a verdict in accordance with such testimony, even though a number of witnesses may have testified to the contrary, if, after consideration of all the evidence in the case, you hold greater belief in the accuracy and reliability of the one witness.

Likewise, the weight of the evidence is not necessarily determined by whether the evidence is in the form of a document or in oral testimony. It is for you to determine the weight to be given to evidence based on the circumstances surrounding each document and each piece of testimony.

[You have heard [reputation/opinion] evidence about the character trait of [name of witness] for truthfulness [or untruthfulness]. You should consider this evidence in deciding the weight that you will give to [the witness's] testimony.]

[Bracketed portions to be given where appropriate.]

Court's Instruction No. 9
Impeachment of Witness

When any witness is questioned about an earlier statement that he or she may have made, or earlier testimony that he or she may have given, such questioning is permitted in order to aid you in evaluating the truth or accuracy of his or her testimony at the trial, as well as in deciding what weight to give his or her testimony.

In addition, you may consider statements given by a [party] or [witness under oath] before trial as evidence of the truth of what he or she said in the earlier statements, as well as in deciding what weight to give his or her testimony. However, with respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement [not under oath] [or acted in a manner] that is inconsistent with his or her testimony here in court, you may consider the earlier statement [or conduct] only in deciding whether his or her testimony here in court was true and what weight to give to his testimony here in court.

Whether or not such prior statements of a witness are, in fact, consistent or inconsistent with his or her trial testimony is entirely for you to determine.

A witness may be discredited or impeached by contradictory evidence; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness's present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you think it deserves.

Court's Instruction No. 10
Summary of Deciding Credibility/Weight

To sum up, you should carefully think through all the circumstances which tend to show whether a witness is worthy of belief. After making your own judgment, you will give the testimony of each witness such weight, if any, as you think it deserves. You may, in short, accept or reject the testimony of any witness in whole or in part.

Court's Instruction No. 11
Experts

The rules of evidence ordinarily to do not allow witnesses to testify to opinions or conclusions about things they did not personally observe. But an exception to this rule exists for people we refer to as "experts." The law allows witnesses who by education, experience, and/or training have become expert in some art, science or profession to state their opinions as to relevant and material matters within their area of expertise.

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 evaluate the experts' training, qualifications and knowledge on the subject matter of his or her testimony, and consider whether the opinions expressed are based on sound reasoning, judgment and information. You should assess the weight to be given to the expert opinion in light of all the evidence in the case, just as you would with any other witness. You may accept or reject an expert's opinion in whole or in part, just as with any other witness.

Court's Instruction No. 12
Notetaking

Any notes that you 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 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.

Court's Instruction No. 13
Court's Questions to Witnesses

[During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.]

[Bracketed portions to be given where appropriate.]

Court's Instruction No. 14
Jury Questions

[I have asked certain witnesses questions that jurors have submitted. You should not give greater weight to these questions and answers than to any other questions and answers, just because they were questions submitted by jurors.

I have decided not to ask certain questions submitted by jurors. You should draw no conclusions or inferences if a question is not asked with regard to the facts in the case, and you should not speculate about the answer to any unanswered question.]

[Bracketed portions to be given where appropriate.]

Court's Instruction No. 15
Burden of Proof

In a civil action, such as this one, the burden is on the plaintiff to prove every essential element of his or her claim by a preponderance of the evidence. [As to certain affirmative defenses which will be discussed later in these instructions, however, the burden of establishing essential facts is on the defendant, as I will explain.]

To "prove by a preponderance of the evidence" means to prove that something is more likely true than not true. This rule does not require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case. Rather, 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 your minds belief that what is sought to be proved is more probably true than not true.

When I say in these instructions that a party has the burden of proof on any proposition, or use the expression "if you find" or "if you decide," I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, the jury may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

If the proof establishes each essential element of the plaintiff's claim by a preponderance of the evidence, then you should find for the plaintiff as to that claim.

If the proof fails to establish any essential element of the plaintiff's claim by a preponderance of the evidence [as to any particular defendant], then you should find for [the] [that] defendant as to that claim.

[Bracketed portions to be given where appropriate.]

Court's Instruction No. 16
Consideration of Actual Damages

If you find that plaintiff has failed to prove liability as to a particular claim, you will have no occasion to consider the question of damages as to that claim. If you have found that plaintiff has proved liability as to a particular claim, then you must consider whether to award damages as to that claim.

You should not interpret the fact that I am giving 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 – just as the fact that I have given you instructions about the plaintiff's liability claims should not be interpreted as an indication in any way that I believe the plaintiff should, or should not, win this case. It is up to you to decide that question. Instructions as to the measure of damages are given to guide you in the event you should find in favor of the plaintiff by a preponderance of the evidence in accordance with the other instructions.

The law places a burden upon the plaintiff to prove such facts as will enable you to arrive at the amount of damages with reasonable certainty and without speculation. While it is not necessary that the plaintiff prove the amount of those damages with mathematical precision, the plaintiff is required to present such evidence as might reasonably be expected to be available under the circumstances to prove the loss that is claimed.

Damages must be reasonable. If you should find that the plaintiff is entitled to a verdict, you may award only such damages as will reasonably compensate the plaintiff for the injury the plaintiff has proven by a preponderance of the evidence.

You are not permitted to award speculative damages, such as compensation for any prospective loss which, although possible, is not reasonably certain to occur in the future.

[If you should find that the plaintiff is entitled to a verdict, you may not include in, or add to an otherwise just award, any sum for the purpose of punishing the defendant or to serve as an example or warning for others. Nor may you include in your award any sum for court costs or attorneys' fees.]

[Bracketed portions to be given where appropriate.]

Court's Instruction No. 17
Selection of Presiding Juror – Verdict Forms

When you retire to the jury room, you will first select a presiding juror. He or she will preside during your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Read the forms of verdict.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in and date the appropriate form, and each of you will sign it.

Court's Instruction No. 18
Unanimous Verdict/Disagreement Among Jurors

The verdict[s] must represent the considered judgment of each juror. Your verdict[s], whether for or against the parties, 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 other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

Court's Instruction No. 19
Communication with Court

I do not anticipate that you will need to communicate with me during your deliberations. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror or by one or more other members of the jury. The writing should be given to the Courtroom Security Officer who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching the merits of the case other than in writing, or orally here in open court.

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

Keep in mind also that you are never to reveal to any person, not even to the Court, how the jury stands numerically or otherwise on the questions before you, until after you have reached a unanimous verdict.

Court's Instruction No. 20
Verdict Form – Jury's Responsibility

It is proper to add the caution that nothing said in these instructions 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 exclusive duty and responsibility.

Dated: November 15, 2019