



JUDGE JEFFREY I. CUMMINGS
219 South Dearborn Street
Chicago, IL 60604

Courtroom 1219

Chambers 1278

Website: <http://www.ilnd.uscourts.gov>

Telephone: (312) 435-5630

Fax: (312) 777-3810

**Courtroom Deputy – Chez Chambers
Room 1218**

Telephone: (312) 435-6051

STANDARD FINAL JURY INSTRUCTIONS-CIVIL

INTRODUCTION

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

COURT'S INSTRUCTION NO. 1 **The Functions of the Court and the Jury**

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

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.

Perform these duties fairly and impartially. [Do not allow [sympathy/prejudice/fear/ public opinion] to influence you.] [You should not be influenced by any person's race, color, religion, national ancestry, or sex.]

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.

[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.]

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.

COURT'S INSTRUCTION NO. 2
All Litigants Equal Before the Law

In this case [one/some] [of] the [defendants/plaintiffs/parties] [is a/are] [corporation[s], city, or unit[s] of government]. All parties are equal before the law. A [corporation, city, or unit of government] is entitled to the same fair consideration that you would give any individual person.

COURT'S INSTRUCTION NO. 3
The Evidence

The evidence consists of the testimony of the witnesses [,] [and] the exhibits admitted in evidence [, and stipulation[s]].

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

[A stipulation is an agreement between both sides that [certain facts are true] [that a person would have given certain testimony].]

[I have taken judicial notice of certain facts. You must accept those facts as proved.]

[During the trial, certain testimony was presented to you by [the reading of a deposition/depositions] [and video]. You should give this testimony the same consideration you would give it had the witness[es] appeared and testified here in court.]

[You will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. You must consider this evidence only for the limited purpose for which it was admitted.]

COURT’S INSTRUCTION NO. 4
What Is Not Evidence

Certain things are not to be considered as evidence. I will list them for you:

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

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 that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. [This includes any press, radio, Internet or television reports 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, questions and objections or comments 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, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fifth, the lawyers’ opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

COURT’S INSTRUCTION NO. 5
Direct and Circumstantial Evidence

[You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

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.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. When the time comes to deliberate on your verdict, you should consider all the evidence in the case, including the circumstantial evidence.]

COURT'S INSTRUCTION NO. 6
Inferences

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

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this "inference." A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

COURT'S INSTRUCTION NO. 7
Deciding What to Believe

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, [including any party to the case,] you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
 - the witness' memory;
 - any interest, bias, or prejudice the witness may have;
 - the witness' intelligence;
 - the manner of the witness while testifying;
 - [the witness' age;]
 - and the reasonableness of the witness' testimony in light of all the evidence in the case.
-

COURT'S INSTRUCTION NO. 8
Deciding What Weight to Give to Evidence

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

[It is proper for a lawyer to meet with any witness in preparation for trial.]

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

COURT'S INSTRUCTION NO. 9
Prior Inconsistent Statements or Acts

You may consider statements given by [Party] [Witness under oath] before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

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 testimony here in court, you may consider the earlier statement [or conduct] only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

[In considering a prior inconsistent statement[s] [or conduct], you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.]

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 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 professions to state their opinions as to relevant and material matters within their area of expertise.

[You have heard [a witness] [witnesses] give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such 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' qualifications, and all of the other evidence in the case.]

COURT'S INSTRUCTION NO. 12
Notetaking

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

COURT'S INSTRUCTION NO. 13
Multiple Claims; Multiple Plaintiffs/Defendants

You must give separate consideration to each claim and each party in this case. [Although there are [number] defendants, it does not follow that if one is liable, any of the others is also liable.] [Although there are [number] plaintiffs, it does not follow that if one is successful, the others are, too.]

[*If evidence was admitted only as to fewer than all defendants or all claims:*] [In considering a claim against a defendant, you must not consider evidence admitted only against other defendants [or only as to other claims].]

COURT'S INSTRUCTION NO. 14
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. 15
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. 16
Selection of Presiding Juror; General Verdict

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

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 all of you will sign it.

COURT'S INSTRUCTION NO. 17
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.

COURT'S INSTRUCTION NO. 18
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. 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, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, 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.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

ENTER:

A handwritten signature in black ink that reads "Jeff Cummings". The signature is written in a cursive style with a horizontal line underneath it.

Jeffrey Cummings
United States District Court Judge

Dated: November 2, 2023