

PRELIMINARY JURY INSTRUCTIONS IN CIVIL CASE

Members of the jury:

Now that you have been sworn, I will give you some preliminary instructions to guide you in your participation in the trial.

Duty of the Jury

It will be your duty to decide the facts from the evidence in the case. This is your job, and yours alone. You will then have to apply the law that I give you to the facts. You must follow the law, even if you disagree with it.

Nothing I say or do during the course of the trial is intended to indicate any opinion on my part about what the facts are or about what your verdict should be.

Evidence

The evidence from which you will find the facts will consist of the testimony of witnesses, exhibits admitted in evidence, and any facts lawyers agree or stipulate to, or that the court may instruct you to find.

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

1. Lawyers' opening statements and closing arguments 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.

2. Questions and objections or comments by the lawyers are not evidence. Lawyers have an obligation to object when they believe a question is improper. You should not be influenced by the objection, and you should not infer from my rulings that I have any view as to how you should decide the case. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

3. Testimony or exhibits that the court has excluded or told you to disregard is not evidence and must not be considered.

4. Anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence: direct and circumstantial. Direct evidence is proof that does not require an inference, such as 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. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness' testimony to accept or reject. I will give you some guidelines for determining credibility of witnesses at the end of the case.

Burden of Proof

This is a civil case. The burden of proof is by "a preponderance of the evidence." When I say a particular party must prove something by "a preponderance of the evidence," or when I use the expression "if you find," or "if you decide," this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

[Those of you who have sat on criminal cases will have heard of proof beyond a reasonable doubt. That requirement does not apply to a civil case and you should therefore put it out of your mind.]

Conduct of the Jury

Now, a few words about your conduct as jurors.

First, I instruct you that during the trial you are not to discuss the case with anyone or permit anyone to discuss it with you. For example, you are not to use electronic communication such as e-mail, text messaging and instant messaging or on-line discussions, chat rooms, or postings on internet sites

such as Facebook, MySpace, or Twitter to communicate with anyone about this case. Until you retire to the jury room at the end of the case to deliberate on your verdict, you simply are not to talk about this case.

Second, do not read or listen to anything touching on this case in any way. If anyone should try to talk to you about it, bring it to the court's attention promptly.

Third, do not try to do any research or make any investigation about the case on your own.

Finally, do not form any opinion until all the evidence is in. Keep an open mind until you start your deliberations at the end of the case.

[If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you so that you do not hear other answers by witnesses. When you leave at night, your notes should be left in the jury room. Whether or not you take notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes].

Conduct of the Trial

The trial will now begin. First, each side may make an opening statement. An opening statement is neither evidence nor argument; it is an

outline of what that party intends to prove, offered to help you follow the evidence.

Next, plaintiff will present his witnesses, and defendant may cross-examine them. Then defendant will present its witnesses, and plaintiff may cross-examine them.

After that, the attorneys will make their closing arguments to summarize and interpret the evidence for you, and the court will give you instructions on the law.

You will then retire to deliberate on your verdict.