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PRELIMINARY JURY INSTRUCTIONS

Introduction

The following preliminary instructions will generally be used in all civil cases. Bracketed portions will be given where appropriate. 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 Preliminary Instruction No. 1
Introduction

Ladies and gentlemen, you are now the jury in this case. Before the trial begins, I want to give you an overview of what will happen. I also want to tell you something about what will be expected of you and how you should conduct yourself during the trial. At the end of the trial, I will give you more detailed instructions that will control your deliberations.

Court's Preliminary Instruction No. 2
Functions of the Court and the Jury

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 will give you at the end of the trial to the facts. You must follow my instructions about the law, even if you disagree with them. Each of the instructions is important, and you must follow all of them. You will have a copy of the jury instructions in the jury room when you deliberate.

One of my duties is to decide all questions of law and procedure. From time to time, I will instruct you about the rules of law that you must follow in making your decision. What we are doing right now is a good example of that.

When I address questions of law and procedure, I am not indicating what I think of the evidence or what I think of a party's claim. Rather, I am applying the rules of law and procedure that govern this case. Therefore, you should not try to guess what I think of the evidence or the merits of a party's claim from my rulings.

Court's Preliminary Instruction No. 3
Order of Trial

Here is the order in which we will proceed.

First, each party's lawyer may make an opening statement. An opening statement is simply a summary of what the lawyer expects the evidence will be. An opening statement itself is not evidence. If both parties decide to make opening statements, the plaintiff's lawyer will make [his/her] opening statement first, and the defendant's lawyer will follow.

After the opening statements, the plaintiff will present [his/her/its] main case. A party's main case consists of introducing evidence in support of [his/her/its] claim[s]. This evidence will consist of the sworn testimony of the witnesses, the exhibits received in evidence, stipulations, and facts that have been judicially noticed. I will say more about these types of evidence in a moment. As with opening statements, the plaintiff will present [his/her/its] main case first. Then, at the end of the plaintiff's main case, the defendant may present [his/her/its] main case. The defendant, however, is not obligated to introduce any evidence. After both parties complete their main cases, the plaintiff may be permitted to present rebuttal evidence [and the defendant may be permitted to present sur-rebuttal evidence].

After the evidence has been presented, the parties' lawyers may make closing arguments. Closing arguments are designed to present to you the contentions of the parties based on the evidence introduced. During closing arguments, the parties' lawyers will outline for you what they contend that the evidence that has been introduced has shown. The lawyers also will describe for you what they contend are the inferences that you should draw from that evidence. What the lawyers say during closing arguments, just like what they say in opening statements, is not evidence. If both parties decide to make closing arguments, the plaintiff's lawyer will make [his/her] closing argument first, and then the defendant's lawyer will follow. After both parties have made their closing arguments, the plaintiff's lawyer may be permitted to make a rebuttal closing argument [and the defendant's lawyer may be permitted to make a sur-rebuttal closing argument].

After both parties have made closing arguments, I will instruct you on the law that applies to this case.

After I have instructed you on the law, you will go to the jury room to deliberate on your verdict.

Court's Preliminary Instruction No. 4
Burden of Proof

In a civil case, which this is, the plaintiff has the burden of proving its case by what is called "a preponderance of the evidence." The preponderance of the evidence standard is satisfied if, after considering all of the evidence in the case, you are persuaded that something is more probably true than not true.

When I say that a party must "prove," "show," or "establish" something, I am referring to the preponderance of the evidence standard. I also am referring to the preponderance of the evidence standard whenever I use phrases such as "if you find" or "if you decide."

Court's Preliminary Instruction No. 5
Evidence

In reaching your verdict you must consider only the evidence. The evidence in the case will generally consist of: the sworn testimony of the witnesses, the exhibits received in evidence, stipulations, and facts that have been judicially noticed.

A stipulation is an agreement between both parties that certain facts are true. If the parties have stipulated to a fact, one of the parties will read that stipulation into evidence, and you must accept that fact as true.

The law permits me as the judge to take what is called "judicial notice" of certain facts. That means I can find that a certain fact is true. If I take judicial notice of a fact, I will make it clear to you what I have done, and you then must accept that fact as true. [I do not know whether or not that will happen in this case.]

Court's Preliminary Instruction No. 6
Deposition Evidence

Some of the sworn testimony of witnesses in this case will be presented by witnesses who are present at this trial and take the witness stand to testify here in court. But certain testimony may be presented to you by the reading of a deposition. A deposition is the sworn testimony of a witness taken before trial. During a deposition, the witness takes an oath to tell the truth, and then the lawyers for each party may ask the witness questions. These questions and the witness's answers are recorded.

When testimony is presented to you by reading a deposition, that testimony is entitled to the same consideration as testimony presented to you by a witness who testifies in court during this trial. That means the deposition testimony should be judged, insofar as possible, in the same way as if the witness had been present and testified from the witness stand. Put simply, you must not decide to accept or reject certain testimony just because that testimony is presented by the reading of a deposition.

Court's Preliminary Instruction No. 7
Direct and Circumstantial Evidence

You may have heard the phrases "direct evidence" and "circumstantial evidence." To ensure that all members of the jury are familiar with these terms, I want to say a couple things about them.

Direct evidence is proof that does not require an inference. An example of direct evidence is a witness's testimony about what he or she personally saw, did, or heard. For instance, if a witness were to say, "I was outside yesterday, and I saw it raining," that would be direct evidence that it was raining yesterday.

Circumstantial evidence, on the other hand, is proof of a fact, or a series of facts, that tends to show that some other fact is true. For instance, if a witness were to say, "I was standing in the lobby of my apartment building yesterday, and I saw a woman enter the building with a wet umbrella in her hand," that would be circumstantial evidence that it was raining yesterday. It would not be direct evidence because the witness did not see it raining herself. Instead, the witness saw something from which she could draw the inference that it was raining.

Although direct and circumstantial evidence are different types of evidence, you must consider all the evidence in reaching your verdict. The law makes no distinction between the weight to be given to direct or circumstantial evidence. It is the responsibility of you, the jury, to decide how much weight to give any evidence in the case.

Court's Preliminary Instruction No. 8
Inferences

You are to consider only the evidence in this case when reaching your verdict.

However, you should consider the evidence in light of your own observations in life. Further, in weighing the evidence, you should use your common sense.

One of the important ways you use common sense in everyday life is by drawing inferences. That is, you often look at one fact and conclude from it that another fact exists. Here is an example. Let's say you are driving on the highway, and you pass a car that is stopped on the shoulder of the road. You see there is a tow truck in front of the car and the tow truck driver is hooking the car up to the tow truck. From these facts, you may reasonably infer the car being towed cannot be operated safely at that time. That may not be the only inference that could be drawn from what you saw, but it is one reasonable inference that you could draw. You might draw this reasonable inference even though no one actually told you whether the car can operate safely.

When reaching your verdict, you are allowed to make such inferences by drawing from your observations in life and using your common sense, but any inference you make must be reasonable and must be based on the evidence in the case.

Court's Preliminary Instruction No. 9
What Is Not Evidence

Let me tell you what is not evidence.

As I said, the evidence generally will include the sworn testimony of the witnesses, exhibits received in evidence, stipulations, and facts that have been judicially noticed.

Here are some things that are not evidence. This is not an exhaustive list, and I will only mention three things that are not evidence.

- First, nothing said by the lawyers is evidence. What the lawyers say during opening statements and closing arguments is not evidence. Likewise, statements and objections made by the lawyers during the trial are not evidence.

- Second, throughout the trial, I may order evidence stricken from the record. If I do, I will tell you that I am doing so. For instance, I may tell you to disregard certain testimony. When I strike something from the record, it is no longer evidence in this case. That means you must not consider it in reaching a verdict.

- Third, what you see or hear when the court is in recess is not evidence. In other words, anything that you see or hear outside of this courtroom is not evidence. This is true even if what you see or hear is done or said by one of the parties, one of the lawyers, or one of the witnesses.

You must **not** consider these things that are not evidence in reaching your verdict.

Court's Preliminary Instruction No. 10
Limited Purpose Evidence

Some evidence may be admitted for a limited purpose only. If evidence is admitted for a limited purpose, I will instruct you both as to what evidence was admitted with a limited purpose and as to what that limited purpose is. When evidence is admitted for a limited purpose, you must consider it only for that limited purpose. You must not consider it for any other purpose.

Court's Preliminary Instruction No. 11
Rulings on Objections

There are rules of law that control what can be received into evidence and what arguments the lawyers can make. At times during the trial, the lawyers will object when they think that the rules of law do not permit the offering of a particular piece of evidence or the making of a particular argument. These objections will raise questions of law that I must decide. Therefore, when a party objects, I will rule on whether the objection should be sustained or overruled. If I sustain an objection, then you must disregard the evidence or the argument that was objected to. For instance, if I sustain an

objection to a question that one of the lawyers asks a witness, you must ignore the question and not guess what the answer would have been. If, on the other hand, I overrule the objection, the evidence will be allowed to become part of the record, and you must consider it like any other piece of evidence.

You should not be influenced by any objections. Lawyers have a duty to object when they believe improper evidence or argument is being offered against the party that they represent. You should not be prejudiced against a lawyer or that lawyer's party because the lawyer makes an objection that I either sustain or overrule.

Relatedly, you also should not be influenced by my rulings on any objections. That means you should not try to guess whether my rulings or other comments indicate that I have any opinion about how you should decide this case.

Court's Preliminary Instruction No. 12
Bench Conferences

At times during the trial, it may be necessary for the lawyers and me to discuss certain issues. These discussions are called "bench conferences." Because bench conferences involve either questions of law or procedure that I must resolve, the conferences must occur outside of your presence. Sometimes, I will try to do bench conferences by having the lawyers approach the bench and whispering with them while the court reporter records what we say. If we do so, you should feel free to stand up and stretch your limbs while we are so occupied. If the matter appears to require prolonged attention, I will excuse you from the courtroom for your greater comfort.

The lawyers and I will do what we can to keep the number and length of these bench conferences to a minimum. Please understand that these conferences are an important way to ensure that the case proceeds smoothly and fairly.

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

During the trial, I also may occasionally ask questions of a witness. You should not assume that I hold any opinion on the matters related to my questions. You also should not assume based on these questions that I hold any opinion on how the case should be decided.

Court's Preliminary Instruction No. 14
Pay Attention

At the end of the trial, it will be your duty to make your decision based on what you recall of the evidence. You will not have a written transcript to consult. Therefore, it is especially important that you pay close attention to the testimony of each witness while she or he is testifying.

I appreciate that listening is hard; it requires work and effort. But it is something you must strive to do in order to give these parties the fair and impartial trial they deserve.

Court's Preliminary Instruction No. 15
Note-Taking Allowed

I am going to allow you to take notes, and, before opening statements, my courtroom deputy is going to give you notebooks. Let me tell you the ground rules with respect to note-taking.

I recognize that, for some people, writing things down helps them to remember. That is not true of everyone. For some people, taking notes may preoccupy or distract them so that they do not hear and evaluate all of the evidence. So you are not obliged to take notes. If you want to take notes, though, do not allow note-taking to distract you from the ongoing proceedings.

If you take notes, they should only be used to refresh your memory. The notes are not evidence, and they should not take precedence over your independent recollection of the evidence. If your memory differs from your notes, you should rely on your memory and not your notes because the notes themselves are not evidence. If you do not take notes, you should rely on your own independent recollection of the proceedings and you should not be unduly influenced by the notes taken by other jurors. I strongly emphasize that no juror's notes are entitled to any greater weight than his or her independent recollection and impressions.

If you want to take notes—and, again, that is entirely up to you—we will provide you with a notepad for that purpose. Please take notes only in that notepad.

Here are the procedures for taking notes.

1. As soon as the notepads are distributed, write your name on the cover of the notepad.

2. When you leave the courtroom for breaks and at the end of each day, leave your notepad on your chair. As soon as you walk out of the courtroom, my courtroom deputy will collect your notepad. She will not let anyone else touch them or look at them. They will remain in my chambers and nobody will look at them.

3. Do not show your notes to anyone at any time. Your notes are only for your own use. That means you should not show your notes to other jurors during the course of the trial or during your deliberations.

I want to assure you that no one other than you will ever be allowed to look in your notepads at any time, including me. Whenever my courtroom deputy collects your notepads, she will take them to a secure location. No one, including her and me, will look in them. When the trial is completed and you have rendered a verdict, my courtroom deputy will collect your notepads for the last time, and they will be destroyed. I emphasize again that you are the only person who will ever see what is in your notepad.

For those jurors who decide not to take notes, I want to repeat that, just because another juror, has taken notes, it does not mean that his or her memory of the evidence is any better than your memory.

Court's Preliminary Instruction No. 16
Conduct of the Jury

Now, I want to say a few words about your conduct as jurors.

You must not make up your mind about what the verdict should be until after you have gone to the jury room to deliberate and to decide the case. During your deliberations, you will have as much time as you need to discuss the evidence and reach a verdict. You should not do either of those things before then.

From this most fundamental of principles, several more rules follow.

First, from now until I discharge you to deliberate, you must not discuss this case with anyone, including your fellow jurors, members of your family, and people involved in the trial. In fact, you should not even talk about anyone who has anything to do with this case. You may talk with your fellow jurors from now until I discharge you to deliberate; it is just that your conversation must not touch on the case or people and things related to the case. After the trial has ended and I discharge you to deliberate—and only then—you may start talking with your fellow jurors about the case. Even after you begin deliberations, though, you still cannot talk to anyone other than your fellow jurors about the case, or the people and things related to the case

You are permitted to tell other people that you are a juror in a case, but you cannot say anything more about the case until after you have been discharged from jury service. This bears repeating, and I will say it again to you during the trial.

Second, you must not let anyone tell you anything about the case or about anyone who has anything to do with the case. If someone should try to talk to you, please report it to me immediately. You can report it to me by giving a signed note to my courtroom deputy, who will make sure that I get it.

Third, you must not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with the case.

Fourth, you must not do any research of your own or make any investigation about the case on your own. That means you cannot even consult a dictionary about a term that was not explained or search for information on the internet. You also must not use social media to do any research related to this case, to investigate this case, to read about this case, or to contact any parties, witnesses, lawyers, or court personnel involved in this case. That means, for greater emphasis, that you must not use any electronic device or media—such as a telephone, cell phone, smartphone, iPhone, Internet service, text or instant messaging service, Internet chat room, blog, or website—to communicate any information about this case or to conduct research about the case.

Court's Preliminary Instruction No. 17
Communications between the Lawyers and the Jurors

Relatedly, the lawyers are obligated to avoid any contact with the jury during the trial. So do not be offended if the lawyers ignore you, refuse to speak with you, and avoid eye contact with you. They are not trying to be unfriendly. They are trying to follow my mandate that they avoid contact with every member of the jury until the case is concluded.

Because the courthouse is a small place, you may have occasion to see the lawyers in this case in the hallways during breaks or in the cafeteria on the second floor. But I want everyone to use their best efforts to avoid this as much as possible. To minimize the risk of contact between the jurors and the lawyers, jurors should use the [north/south] elevator bank, and lawyers should use the [south/north] elevator bank.

At the conclusion of the trial, after the verdict has been entered, you will have an opportunity to meet with the lawyers if you so desire. But, until that time, any contact is prohibited.

Court's Preliminary Instruction No. 18
Description of a Trial Day

I want to close by describing how a normal trial day will proceed.

> You must be in the jury room at 9:00 a.m. There will be coffee and rolls provided for you each morning in the jury room.
>
> Then, at 9:30 a.m., the proceedings for the day will begin.
>
> At some point during each morning, we will take a 15-minute break.
>
> Starting at approximately noon or one o'clock, we will take an hour-long lunch break.
>
> At some point during each afternoon, we will take another 15-minute break. During this break, a snack may be provided to you.
>
> The proceedings for the day should be concluded by 4:30 or 5:00 p.m. Some days, we may end a little earlier, but we will not run much later. There is one exception. When you are deliberating, you can stay later if you, the jury, decide that is what you want to do.

When arriving in the morning and returning from breaks, you must not be late. If you are late, you will delay the trial and inconvenience the court, the parties, the lawyers, and your fellow jurors. We all understand that trains can be delayed and traffic can be bad. You should plan accordingly to ensure that you are here when you are supposed to be.

The jury room will be your home base during the course of the trial. You will always assemble in the jury room at the beginning of the day and at the end of each break. Whenever we take a short break,

you will return to the jury room. You will find restrooms for your personal use in the jury room. We will try to make your duties as pleasant and as comfortable as possible. If you have any issues, please let my courtroom deputy know about them. She will then inform me and we will see if we can resolve the matter.

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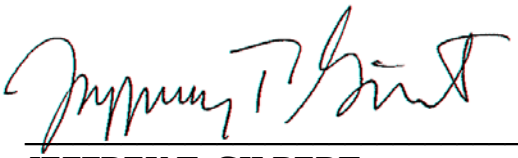

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United States Magistrate Judge