

INSTRUCTION NO. 1

Ladies and Gentlemen:

Now that you have been sworn, I will briefly tell you something about your duties as jurors and give you some instructions. At the end of the trial I will give you additional instructions, and those instructions, as well as these preliminary instructions and any instructions given during the trial, will control your deliberations.

These instructions explain your duties as jurors and define the law that applies to this case. It is your duty to determine the facts, to apply the law set forth in these instructions to those facts, and in this way, to decide the case. Your decision should be based upon a rational and objective assessment of the evidence.

It is my duty to instruct you on the points of law necessary to decide the case, and it is your duty to follow the law as I instruct. You must follow these instructions regardless of your own opinion of what the law is or should be, or what counsel for any party may state the law to be. You must consider these instructions as a whole, not picking out one and disregarding others. The order in which these instructions are given or the manner in which they are numbered has no significance as to their importance.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence will consist of the testimony of witnesses, exhibits admitted into evidence, and any stipulated or admitted facts.

The following things are not evidence and you must not consider them as evidence in deciding the facts of this case:

1. Statements and arguments of the lawyers;
2. Questions and objections of the lawyers;

3. Testimony that I instruct you to disregard; and

4. Anything you may have seen or heard when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

Evidence may be either direct or circumstantial. The law makes no distinction between direct and circumstantial evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

The production of evidence in court is governed by rules of law. At times during the trial, I may sustain an objection to a question without permitting the witness to answer it, or to an offered exhibit without receiving it into evidence. My rulings are legal matters, and are solely my responsibility. You may not speculate as to the reason for any objection which was made, or my ruling thereon, and in reaching your decision you may not consider such a question or exhibit or speculate as to what the answer or exhibit would have shown.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence, which I told you to disregard. Some evidence is admitted for a limited purpose only. If I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

The law does not require you to believe all of the evidence in the course of the trial. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it. In so doing, you bring with you to this courtroom all of the experience and background of your lives. There is no magical formula for evaluating testimony. In your everyday affairs, you determine for yourselves whom you believe, what you believe and how much weight you attach to what you are told. These

considerations you use in making the more important decisions in your everyday dealings are the same considerations you should apply in your deliberations in this case.

In a civil case any party who asserts that certain facts exist or existed has the burden of proving those facts.

When I say that a party has the burden of proof on a proposition, or use the expression "if you find," or "if you decide," I mean that you must be persuaded that the proposition on which the party has the burden of proof is more probably true than not true.

The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

I will now say a few words about your conduct as jurors. There are certain things you must not do during this trial:

1. You must not discuss the case with other jurors until you retire to the jury room to deliberate at the close of the entire case.

2. You must not make up your mind until you have heard all of the testimony and have received my final instructions as to the law that applies to the case.

3. You must not discuss the case with anyone, and that includes your family and friends. You must not communicate with anyone about this case in any way, and this includes use of your cell phone, by text message, by any web page posting, or through email. You must not allow anyone to discuss the case with you. If anyone attempts to discuss the case with you, or attempts to influence your decision in the case, you must report it to me immediately.

4. You must not associate in any way with the parties, any of the attorneys or their

employees, or any witnesses.

5. You must not contact anyone in an attempt to discuss or gain a greater understanding of the case. You must not use the internet or any other tools of technology to in any way make an investigation of any aspect of this case. You must not attempt to find out any information from any source outside this courtroom.

6. You must not go to the place where any alleged event occurred.

During your deliberations, you will be entitled to have with you my instructions concerning the law that applies to this case, the exhibits that have been admitted into evidence and any notes taken by you in the course of the trial proceedings.

If you take notes during the trial, be careful that your attention is not thereby diverted from the testimony of the witness. You must keep your notes to yourself and not show them to other persons or jurors until the jury deliberations at the end of the trial. When you leave at night, leave your notes in the jury room.

Judge

INSTRUCTION NO. 3

Any statement by me identifying a claim of a party is not evidence in this case. I have advised you of the claims of the parties merely to acquaint you with the issues to be decided.

Judge

INSTRUCTION NO. 4

A witness who has special knowledge in a particular matter may give his or her opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the witness' opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

Judge

INSTRUCTION NO. _____

Whether a party has insurance is not relevant to any of the questions you are to decide. You must avoid any inference, speculation or discussion about insurance.

Judge

INSTRUCTION NO. _____

Certain evidence is about to be presented to you by deposition. A deposition is testimony taken under oath before the trial and preserved in writing or upon videotape. This evidence is entitled to the same consideration you would give had the witness testified from the witness stand.

You will only receive this testimony in open court. Although there is a record of the testimony you are about to hear, this record will not be available to you during your deliberations.

Judge

INSTRUCTION NO. 9

Ladies and Gentlemen: The presentation of evidence is now complete. It now becomes my duty to give you your final instructions as to the law applicable to this case. You will remember that at the start of this trial I instructed you as to your duties as finders of fact. You must keep those earlier instructions in mind, and faithfully follow them as well as the final instructions which I now give you.

Judge

INSTRUCTION NO. 17

By giving you instructions on the subject of damages, I do not express any opinion as to whether plaintiff is entitled to damages.

Judge

INSTRUCTION NO. 18

You will each receive a copy of the instructions.

The original instructions will also accompany you in to the jury room. If I have made any changes to these instructions, I will tell you about those changes and I will note the changes on the original instructions. Please do not write on or mark the original instructions, as they are part of the official record.

The instructions are numbered for the convenience of the court and counsel in referring to specific instructions. There may or may not be a gap in the numbering of the instructions. If there is, you should not concern yourselves about such gap.

Judge

INSTRUCTION NO. 19

Upon retiring to the jury room, select one of you as a presiding officer, who will preside over your deliberations. It is his or her duty to see that your discussion is carried on in a sensible and orderly fashion; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question.

An appropriate form of verdict will be submitted to you with these instructions. Follow these directions on the verdict form, and answer all of the questions required of you by the instructions on the verdict form.

A verdict may be reached by three-fourths of your number, or nine of you. As soon as nine or more of you have agreed upon a verdict, you should fill it out as instructed, and have it signed. If there is more than one question on the verdict form, it is not necessary that the same nine agree on each question. If your verdict is unanimous, your presiding officer alone will sign it; but if nine or more, but less than the entire jury, agree, then those so agreeing will sign the verdict form.

As soon as you have completed and signed the verdict form, notify the bailiff, who will then return you into open court.

In deciding this case, you may not delegate any of your decisions to another or decide any question by chance, such as by the flip of a coin or drawing of straws. If money damages are to be awarded or percentages of fault are to be assigned, you may not agree in advance to average the sum of each individual juror's estimate as the method of determining the amount of the damage award or percentage of negligence.

If, after considering all of the instructions in their entirety, and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a note signed by one or more of you to the Bailiff. You should not try to communicate with me by any means other than such a note.

During your deliberations, you are not to reveal to anyone how the jury stands on any of the questions before you, numerically or otherwise, unless requested to do so by me.

Judge

INSTRUCTION NO. 20

I have given you the rules of law that apply to this case. I have instructed you regarding matters that you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing arguments to you and then you will retire to the jury room for your deliberations.

Each of you has an equally important voice in the jury deliberations. Therefore, the attitude and conduct of jurors at the beginning of the deliberations are important. At the outset of deliberations, it is rarely productive for a juror to make an emphatic expression of opinion on the case or to state how he or she intends to vote. When one does that at the beginning, one's sense of pride may be aroused and there may be reluctance to change that position, even if shown that it is wrong. Remember that you are not partisans or advocates, but you are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

Consult with one another. Consider each other's views. Deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You should fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case, together with the law that relates to this case as contained in my instructions.

During the course of deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest

opinion as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Judge