

**STOCK JURY INSTRUCTIONS FOR CIVIL CASES
FOR UNITED STATES DISTRICT JUDGE ROBERT C. BRACK**

Judge Brack has some initial instructions to the jury prior to beginning the opening statement, which are included here as Instruction A. “Stock” Instructions #s 1-8 are given just before the closing arguments begin. The final instruction # 9 is given immediately after closing argument and just before the jury retires to deliberate.

You should not submit proposed instructions on the matters already covered by these stock instructions unless you have some specific objection. Rather, please focus your efforts in developing the more specific proposed instructions covering the elements of the claims, defenses and damages. Additionally, please prepare your proposed jury instructions in accordance with Judge Brack’s rules for trial.

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A		Preliminary Instructions
No. 1	5th Circuit 1.03	Introduction to Final Instructions
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INSTRUCTION NO. A

Members of the Jury:

This is preliminary information about what we need to do here.

As jurors, you serve as guardians of historic freedoms. The right to trial by jury is guaranteed by the constitution. You are now a part of the court and participate in one of the most important functions of any society - the attempt and desire to achieve justice.

The lawyers present the evidence; I determine what evidence may be presented and what the law is. You will serve as the sole judges of what the facts are. You are to do this without sympathy, bias or prejudice as to any party. You should carefully and fairly consider all the evidence admitted at this trial. At the beginning, the lawyers may make opening statements, outlining what each party expects to prove. These statements are supposed to give you an overall look at the case to allow you to more easily follow the testimony. These statements are not evidence and no one is required to make a statement.

Next comes the introduction of evidence which consists of testimony of witnesses and exhibits. A witness may testify in person or by a deposition, which is a written or videotaped testimony given under oath at an earlier time. First, the plaintiff will offer evidence in support of his/her case. Then the defendant is allowed to present evidence in support of the defense. Under certain circumstance, the plaintiff may then offer rebuttal evidence. Since you are to determine the facts, you alone must decide upon the believability of the evidence and its weight and value. In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude and behavior of the witness, the interest of the witness in the outcome of the suit, the relationship of the witness to the parties, the inclination of the witness to speak the truth, the probability of the witness' statements, and all other facts and circumstances

in evidence. Thus, you may give the testimony of any witness such weight and value as you believe it is entitled to receive.

Evidence can be either direct or circumstantial, and you will be instructed again on this before you deliberate. Direct evidence is testimony of someone with actual knowledge of a fact, such as an eye witness. Circumstantial evidence is indirect evidence which may lead to the reasonable inference of a fact. The law makes no distinction between the weight you may give to direct or circumstantial evidence. You must confine your decision to the evidence submitted to you here in this courtroom during this trial. You may consider no other evidence. However, in your consideration of the evidence you are not limited to the testimony of the witnesses. While you may not conduct any research or experiments on your own, you may draw from the testimony and the facts which you find from it any reasonable inferences that may be justified in light of your experience. You are to apply good judgment to what you hear. You may not guess, speculate or conjecture, and you must not be influenced in any degree by any personal feelings or sympathy for, or prejudice against, the parties or their lawyers.

You are to follow all of my rulings. However, no statement, ruling, remark or gesture which I may make during the trial is intended to indicate my opinion as to what the facts are. After all of the evidence has been presented, I will instruct you on the law of the case. It is your duty to follow the law and to apply it to the facts that you find from the evidence. From time to time, the lawyers may make objections to evidence or procedure - do not hold that against them as that is part of their job. My rulings on the objections are binding on you. If a lawyer asks a question or a witness gives an answer that I instruct you to disregard, do your best to erase it from your mind and give it no consideration. My ruling on the admissibility of evidence does not

go to the weight or the credibility of the evidence or to the credibility of the witness. If evidence is admitted for a limited purpose only, I will give you an instruction and you can consider that evidence only for its limited purpose and no other. Any notes that you take during this trial are only aids to your memory. If your memory differs from notes made by you or other jurors, you should rely on your memory and not on the notes. Again, the notes are not evidence and are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

During the trial, you are not to discuss the case with one another or with anyone else, and you must not permit anyone to discuss it with you. If anyone attempts to discuss it with you, report the incident to me. During the trial, you should not come to any conclusions regarding the merits of the case. You should not discuss the case with each other until you have heard all the evidence, the arguments of lawyers and my instructions. You are not to carry on any conversations in the halls, the elevator or elsewhere, with anyone who may be connected with the case, such as the lawyers, the parties or the witnesses. Even though your conversations may be entirely innocent, they might lead to mistrial, which would waste time and money. You should have no knowledge of the case except that knowledge that you gain from evidence admitted in this courtroom. During this trial, you should not read any newspaper accounts or broadcasts concerning it. After all, you are in a much better position to know what is going on here than are persons who are in and out of the courtroom - you will have heard all of the evidence. You are further instructed that if you should inadvertently read something about this trial, or if you should inadvertently hear some radio or television comment concerning it, you should completely disregard it and put it out of your minds. You are not to perform any experiments or research.

Your ultimate verdict in the case should be based upon the evidence presented to you in this courtroom.

INSTRUCTION NO. 1

Members of the Jury:

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to decide what evidence is proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give you some general instructions which apply in every case; for example, instructions about burden of proof and how to judge the believability of witnesses. Then I will give you some specific rules of law about this particular case and, finally, I will explain to you the procedures you should follow in your deliberations.

INSTRUCTION NO. 2

You, as jurors, are the judges of the facts. But, in determining what actually happened - that is, in reaching your decision as to the facts - it is your sworn duty to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took before being accepted by the parties as jurors, and they have the right to expect nothing less.

RB STOCK
Fifth Circuit Pattern Jury Instruction
1.04 Duty to Follow Instructions

INSTRUCTION NO. 3

It is a general rule in civil cases that a party seeking a recovery or a party relying upon a defense has the burden of proving every essential element of its claim or defense by the greater weight of the evidence.

To prove by the greater weight of the evidence means to establish that something is more likely true than not true. When I say in these instructions that a party has the burden of proof, I mean that you must be persuaded that what is sought to be proved is more probably true than not true. Evenly balanced evidence is not sufficient.

INSTRUCTION NO. 4

As I told you earlier, it is your duty to determine the facts. In doing so, you must consider only the evidence presented during the trial, including the sworn testimony of the witnesses and the exhibits. Remember that any statements, objections, or arguments made by the lawyers are not 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. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

During the trial I sustained objections to certain questions and exhibits. You must disregard those questions and exhibits entirely. Do not speculate as to what the witness would have said if permitted to answer the questions or as to the contents of an exhibit. Also, certain testimony or other evidence has been ordered stricken from the record and you have been instructed to disregard this evidence. Do not consider any testimony or other evidence which has been stricken in reaching your decision. Your verdict must be based solely on the legally admissible evidence and testimony.

Also, do not assume from anything I may have done or said during the trial that I have any opinion concerning any of the issues in the case. Except for the instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own findings as to the facts.

RB STOCK
Fifth Circuit Pattern Jury Instruction
1.06 Evidence-Excluding What is Not Evidence

INSTRUCTION NO. 5

While you should consider only the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the evidence.

In considering the evidence, you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of events and circumstances indicating that something is or is not a fact. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

RB STOCK

Fifth Circuit Pattern Jury Instruction

1.07 (Alternative B) Evidence-Inferences-Direct and Circumstantial

INSTRUCTION NO. 6

I remind you that it is your job to decide the facts in this case. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given the witness' testimony. An important part of your job will be making judgments about the testimony of the witnesses who testified in this case. You should decide whether you believe all or any part of what each person had to say, and how important that testimony was. In making that decision, I suggest that you ask yourself a few questions: Did the person impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness have any relationship with either a plaintiff or a defendant? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness' testimony differ from the testimony of other witnesses? These are a few of the considerations that will help you determine the accuracy of what each witness said.

In making up your mind and reaching a verdict, do not make any decisions simply because there were more witnesses on one side than on the other. Do not reach a conclusion on a particular point just because there were more witnesses testifying for one side on that point. Your job is to think about the testimony of each witness you have heard and decide how much you believe of what each witness had to say.

RB STOCK

**Fifth Circuit Pattern Jury Instruction
1.08 Credibility of Witnesses (Modified)**

INSTRUCTION NO. 7

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter, or by evidence that, at some other time, the witness said or did something, or failed to say or do something, which is inconsistent with the testimony the witness gave at this trial.

Earlier statements of a witness were not admitted in evidence to prove that the contents of those statements are true. You may consider the earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and, therefore, whether they affect the credibility of that witness.

If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

INSTRUCTION NO. 8

Do not let bias, prejudice or sympathy play any part in your deliberations. A corporation and all other persons are equal before the law and must be treated as equals in a court of justice.

RB STOCK
Fifth Circuit Pattern Jury Instruction
2.13 Bias-Corporate Party Involved

INSTRUCTION NO. 9

To reach a verdict, all of you must agree. Your verdict must be unanimous. Your deliberations will be secret. You will never have to explain your verdict to anyone.

It is your duty to consult with one another and to deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to re-examine your own opinions and change your mind if convinced that you were wrong. But, do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are judges-- judges of the facts. Your sole interest is to seek the truth from the evidence in the case, to decide the facts in this case.

When you go to the jury room, the first thing that you should do is select one of your number as your foreperson, who will help guide your deliberations and will speak for you here in the courtroom.

A form of verdict has been prepared for your convenience.

The foreperson will write the unanimous answer of the jury in the spaces provided. At the conclusion of your deliberations, the foreperson should date and sign the verdict.

If you need to communicate with me during your deliberations, the foreperson should write the message, sign it and give it to the marshal. I will either reply in writing or bring you back into the court to answer your message. Bear in mind that you are never to reveal to any person, not even the Court, how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict. Retain the verdict form until I ask you for it here in the courtroom.