

**CHAMBERS OF THE HONORABLE BOBBY R. BALDOCK  
UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT  
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Roswell, New Mexico 88202**

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Stock Jury Instructions  
for use in the  
United States District Court  
for the  
District of New Mexico

## INSTRUCTION

### MEMBERS OF THE JURY:

The time has now come when the court is to give you formal instructions on the law governing this case and to guide you in your deliberations.

Please pay close attention to these instructions.

First, I will state certain general principles which apply to civil jury trials.

Next, I will summarize the issues between the parties for your consideration.

Finally, I will state the rules of law governing this case.

I will read these instructions only once, but the written instructions will be given to you to take to the jury room for your further assistance.

## INSTRUCTION

The law of this case is contained in these instructions and it is your duty to follow them. You must consider these instructions as a whole, not picking out one instruction, or parts thereof, and disregarding others.

## INSTRUCTION

You are the sole judges of all disputed questions of fact in this case. It is your duty to determine the true facts from the evidence produced here in open court. Your verdict should not be based on speculation, guess, or conjecture.

You are to apply the law, as stated in these instructions, to the facts as you find them and, in this way, decide the case. Neither sympathy nor prejudice should influence your verdict.

## INSTRUCTION

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons stand equal before the law, and are to be dealt with as equals in a court of justice.

## INSTRUCTION

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

To prove by a preponderance of the evidence means to establish that something is more likely true than not true. When I say in these instructions that the party has the burden of proof, I mean 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

The evidence which you are to consider in this case consists of the testimony of the witnesses and the exhibits admitted into evidence by the court and any facts admitted or agreed to by counsel and any facts which the court instructs you to accept as true.

The production of evidence in court is governed by rules of law. From time to time it has been my duty, as judge, to rule on the evidence. You must not concern yourselves with the reasons of these rulings. You should not consider what would or would not have been the answers to the questions which the court ruled could not be answered.

## INSTRUCTION

You alone are the judges of the disputed facts in this case. In determining the facts, you must consider only the evidence I have admitted in this case. The term “evidence” includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. 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.

So, while you should consider only the evidence in the case, 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 which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

## INSTRUCTION

You may consider either direct or circumstantial evidence. “Direct evidence” is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. “Circumstantial evidence” consists of proof of facts or circumstances which give rise to a reasonable inference of the truth of the fact sought to be proved. The law makes no distinction between the weight to be given to either direct or circumstantial evidence.

## INSTRUCTION

You alone are the judges of the credibility of the witnesses and of the weight to be given to the testimony of each of them. In determining the credit to be given to the testimony of any witness, you may take into account the witness' ability and opportunity to observe, the witness' memory, the witness' manner while testifying, any interest, bias or prejudice that the witness may have and the reasonableness of the testimony, considered in light of all of the evidence in the case.

## INSTRUCTION

A witness may be discredited or impeached by contradictory evidence or inconsistent conduct or by evidence that at other times the witness has made material statements, under oath or otherwise, which are inconsistent with the present testimony of the witness.

If you believe that any witness has been impeached or discredited, it is your exclusive province to give the testimony of that witness only such credit as you may think it deserves.

## INSTRUCTION

A witness who, by knowledge, skill, experience, training or education, has become expert in any subject may be permitted to state an opinion as to that subject.

You should consider each expert opinion and the reasons stated for the opinion, giving them such weight as you think they deserve. You may reject an opinion entirely if you conclude that it is unsound.

## INSTRUCTION

An expert witness is permitted to state an opinion based upon a question which, for the purposes of trial, assumes as true certain facts which may or may not be true.

It will be for you in your deliberations to determine from all of the evidence whether or not the facts assumed have been proved to be true.

## INSTRUCTION

A medical witness may testify about statements concerning a person's medical history and condition that were made for purposes of diagnosis or treatment. Such statements are not evidence of their own truth, but they may be considered to show the information upon which the witness' diagnosis or medical opinion was based. To whatever extent the opinion of the witness is based upon such statements, you may consider the trustworthiness of the statements in determining the weight to be given to the witness' opinion.

## INSTRUCTION

Certain charts and summaries have been shown to you in order to help explain the facts disclosed by the books, records, and other documents which are in evidence in the case. Such charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

## INSTRUCTION

Some evidence is admitted for a limited purpose only. When 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.

## INSTRUCTION

Deposition testimony is testimony that was taken under oath before trial and has been preserved in writing. This testimony is entitled to the same consideration that you give any other testimony at this trial.

## INSTRUCTION

Interrogatories are written questions asked by one party to another before trial and answered under oath. The questions and answers may be read at trial as evidence. The answers read to you are testimony under oath and are entitled to the same consideration that you give any other testimony.

## INSTRUCTION

An attorney has the right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney does not reflect adversely on the truth of such testimony.

## INSTRUCTION

You are not to engage in any discussion of damages unless you have first determined that there is liability, as elsewhere covered in these instructions.

The fact that you are given instructions on damages is not to be taken as an indication as to whether the court thinks damages should be or should not be awarded.

Only if you find for Plaintiff and against Defendant may you then determine Plaintiff's damages.

## INSTRUCTION

Damages must be reasonable. If you should find that Plaintiff is entitled to damages as a result of Defendant's liability, you may award only such damages as will reasonably compensate Plaintiff for such injuries and damages. You must not award compensatory damages more than once for the same injury. You must find that a preponderance of the evidence in the case supports the award of such damages and that Plaintiff has sustained such damages as a result of Defendant's conduct.

Compensatory damages are not restricted to actual loss of time or money; they also cover both the mental and physical aspect of injury.

You are not permitted to award damages based on speculation or guesswork. The property or wealth of Plaintiff or Defendant is not a legitimate factor for your consideration. Compensatory damages are not allowed as punishment and must not be imposed or increased to penalize Defendant.

## INSTRUCTION

The guide for you to follow in determining fair and just damages is the enlightened conscience of impartial jurors acting under the sanctity of your oath to compensate Plaintiff with fairness to all parties to this action. You must not permit the amount of damages to be influenced by sympathy or prejudice.

## INSTRUCTION

In fixing the amount of damages which will reasonably and fairly compensate Plaintiff, you are to consider that one who is injured or damaged must exercise ordinary care to minimize existing damages and to prevent further damages. Plaintiff may not recover for losses which could have been prevented by reasonable efforts on his part.

## INSTRUCTION

If you find that Plaintiff has established a right to recover from Defendant but that Plaintiff has suffered no harm, insignificant harm, or damages that cannot be ascertained, you may award Plaintiff nominal damages. Nominal damages are a trivial sum of money, usually one dollar, awarded to a party who has established a right to recover but has not established that he is entitled to compensatory damages.

## INSTRUCTION

Faithful performance by you of your duties is vital to the administration of justice.

Your deliberations will be secret. Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. In other words, your verdict must be unanimous. You will never have to explain your verdict to anyone.

It is your duty as jurors to consult with one another, and to deliberate in an effort to reach an agreement if you can do so without giving up your individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of all the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction 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.

## INSTRUCTION

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 special verdict form has been prepared for your convenience.

The foreperson will indicate the unanimous answers of the jury to the questions on the form 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 on a notepad, sign it, and give it to the court security officer. I will either reply to you in writing or bring you back into the courtroom to respond to 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. You are to retain the verdict form until I ask for it here in the courtroom.