

INSTRUCTION NO. _____

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

You alone are the judges of the facts of 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.

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 part thereof, and disregarding others.

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.

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

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As stated earlier, it is your duty to determine the facts and in so doing you must consider only the evidence I have admitted in the 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.

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 for 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.

Also, do not assume from anything that 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 that I have said during the trial in arriving at your own findings as to the facts.

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 NO. _____

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 the 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. I mean that you must be persuaded that what is sought to be proved is more probably 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. _____

Any notes that you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. Your notes are only to refresh your recollection. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and should not be influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

INSTRUCTION NO. _____

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 eye witness. “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 NO. _____

A witness may be discredited or impeached by contradictory evidence or inconsistent conduct,

[or by evidence that at other times the witness made material statements, under oath or otherwise, which are inconsistent with the present testimony of the witness],

[or by evidence that the witness has been convicted of a crime],

[or by evidence that the general reputation of the witness for truth, honesty or integrity is bad],

[or by specific acts of wrongdoing 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 NO. _____

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's 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's opinion.

INSTRUCTION NO. _____

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 NO. _____

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 NO. _____

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.

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Now, I have said that 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 to the witnesses’ testimony. In weighing the testimony of a witness, you should consider:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness’ memory;
- (3) the witness’ manor while testifying;
- (4) the witness’ interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness’ testimony;
- (6) the reasonableness of the witness’ testimony in light of all of the evidence; and
- (7) any other factors that bear on believability

You may believe everything a witness says, or part of it, or none of it.

Discrepancies in a witness’ testimony or between a witness’ testimony and that of other witnesses, if there were any, do not necessarily mean that a witness was not telling the truth. Failure of recollection is common. Innocent misrecollection is not uncommon. Two persons witnessing an incident or a transaction often will see or hear it differently. You should consider whether a discrepancy pertains to an important matter or only to something trivial. After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves.

Additionally, the weight of the evidence is not necessarily determined by the number of

witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

INSTRUCTION NO. _____

The rules of evidence provide that if scientific, technical, or other specialized knowledge might assist you in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify and state an expert opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

An expert witness is permitted to state an opinion 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, however, to determine from all of the evidence whether or not the facts assumed have been proved to be true.

INSTRUCTION NO. _____

The proximate cause of an injury is that which, in a natural and continuous sequence produces the injury and without which the injury would not have occurred. It need not be the only cause, nor the last nor nearest cause. It is sufficient if it occurs with some other cause acting at the same time which, in combination with it, causes the injury.

INSTRUCTION NO. _____

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 or should not be awarded.

INSTRUCTION NO. _____

Upon retiring to the jury room, you should first elect a foreman who will preside over your deliberations and will be your spokesman here in court.

A verdict form has been prepared for your convenience. You will take this verdict form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreman fill in, date, and sign it. The foreman will then notify the court security officer that you have reached a verdict.

INSTRUCTION NO. _____

If it becomes necessary during your deliberations to communicate with me, you may send a note through the court security officer, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court.

Remember that you are not to tell anyone – including me – how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

INSTRUCTION NO. _____

Nothing said in these instructions and nothing in any form of verdict, which has been prepared for your convenience, is to suggest or convey to you in any way or manner any intimation as to what verdict I think you should return. What the verdict shall be is the sole and exclusive duty and responsibility of the jury.

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If you should decide in favor of the plaintiff on the question of liability, you may then award such damages as will reasonably compensate the plaintiff for such injury and damages as you find, from a preponderance of the evidence in this case, that the plaintiff has sustained as a proximate result of the [**negligence**][**wrongful conduct**] as claimed.

The elements of damages which are at issue and which you may consider are:

(NOTE: here insert the proper elements of damages.)

Whether any of these elements of damages have been proved by the evidence is for you to determine. Your verdict must be based upon proof and not upon speculation, guess or conjecture.

Further, sympathy or prejudice for or against a party should not affect your verdict and is not a proper basis for determining damages.