

Ladies and gentlemen:

Now that you have been sworn as the jury to try this case, I want to take a few minutes to tell you something about your duties as jurors and to give you some preliminary instructions. At the end of the trial I will give you more detailed written instructions that will control your deliberations. When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. To the facts as you find them, you will apply the law as I give it to you, whether you agree with the law or not. You must decide the case solely on the evidence and the law before you and must not be influenced by any personal likes or dislikes, opinions, sympathy, prejudices, or biases, whether explicit or implicit. Please do not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be — that is entirely up to you.

As you know, this is a civil case. The plaintiff(s) has (have) the burden of proving his/her/their case by what is called the preponderance of the evidence. That means the plaintiff(s) has (have) to produce evidence which, considered in the light of all the facts, leads you to believe that what the plaintiff(s) claims (claim) is more likely true than not true. To put it differently, if you were to put the plaintiff's and the defendant's evidence on the opposite sides of the scales, the plaintiff(s) would have to make the scales tip somewhat in his/her/their side. If the plaintiff(s) fails (fail) to meet this burden, the verdict must be for the defendant.

Those of you who have sat on criminal cases will have heard of proof beyond a reasonable doubt. That requirement does not apply to a civil case; therefore, you should put it out of your mind.

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness; and
- (2) the exhibits which are received in evidence; and
- (3) any facts to which the parties agree.

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 attorneys;
- (2) questions and objections of the attorneys;
- (3) testimony that I instruct you to disregard; and
- (4) anything you may see or hear 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.

The evidence that will be presented to you during the trial may be either direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

There are rules of evidence that control what can be received in evidence. When a lawyer asks a question or offers an exhibit in evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, or the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer would have been.

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 that I told you to disregard.

Some evidence may be admitted during the trial for a limited purpose only. If I instruct you that an item of evidence has been admitted only for a limited purpose, you must consider it only for that limited purpose and for no other.

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

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

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

You should pay close attention to the testimony and all evidence as it is presented because it will be necessary for you to rely upon your collective memories concerning what the testimony was when you retire to deliberate on a verdict. At the end of the trial you will have to make your decision based on what you recall of the evidence. Although, as you can see, a court recorder is making a recording of everything that is said during the trial, typewritten transcripts cannot be prepared for your use during deliberations and you should not expect to receive them. I urge you to pay close attention to the testimony as it is given.

On the other hand, all exhibits admitted into evidence during the trial will be available to you for your detailed study during your deliberations. So, if an exhibit is received into evidence but is not fully read or shown to you at the time, do not be concerned because you will get to see the exhibit later during your jury deliberations.

From time to time during the trial, it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench or a side bar when the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error. Of course, we will do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be.

If you wish, you may take notes during the course of trial. However, it is difficult to take detailed notes and pay attention to what the witnesses are saying at the same time. If you do take notes, be sure that your note taking does not interfere with your listening to and considering of all the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Please do not take your notes with you when you leave at the end of the day — be sure to leave them in the jury room. At the end of the case, your notes will be collected and destroyed.

Whether or not you take notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes. We depend on the judgment of all members of the jury; you all must remember the evidence in this case.

I also permit jurors to submit written questions for witnesses who are called to testify during the trial. You may propose questions in order to clarify the testimony, but you are not to express any opinion about the testimony or argue with a witness. If you propose any questions, remember that your role is that of a neutral fact finder, not an advocate.

The following is the process for you to propose questions. If you have a question that you believe should be asked of a witness, you may write out the question for that witness, but this should occur while the witness is still testifying and before he or she is excused by the court. After you have written out your question, hand it to the juror sitting in the front row in the seat closest to the witness stand. That juror will raise his or her hand and my courtroom administrator will accept the question. I will discuss the question with the attorneys during side bar or when we take a recess. There are some proposed questions that I will not permit, or will not ask in the wording submitted by the juror. This might happen either due to the rules of evidence or other legal reasons, or because the question is expected to be answered later in the case. If I do not ask a proposed question, or if I rephrase it, do not speculate as to the reasons or about what the answer might have been. Do not give undue weight to questions you or other jurors propose. You should evaluate the answers to those questions in the same manner you evaluate all of the other evidence. Always remember that you are not advocates for one side or the other in this case. You are impartial judges of the facts.

By giving you the opportunity to propose questions, I am not requesting or suggesting that you do so. It will often be the case that a

lawyer has not asked a question because it is legally objectionable or because a later witness may be addressing that subject.

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, you, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in the case, and the individuals involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom. You must avoid reading, listening to, or viewing any news accounts concerning this case. Until you retire to deliberate, you may not discuss this case with anyone, even your fellow jurors. Nor should you permit anyone to discuss it with you or in your presence. After you retire to deliberate, you may begin discussing the case with your fellow jurors, but you cannot discuss the case with anyone else until you have returned a verdict and the case is at an end. I know that many of you use cell phones, iPads and other electronic devices, the Internet, and other tools of technology. You also must not talk to anyone at any time about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter, or through any blog or website, including Facebook, Google+,

LinkedIn, or YouTube. You may not use any similar technology of social media, even if I have not specifically mentioned it here.

If during the course of the trial you find it necessary to communicate with me regarding anything pertaining to this case, I would ask that you simply provide a signed note to my Courtroom Deputy Clerk, Peggie Vannozzi, who will give it to me.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings. If any juror is exposed to any outside information, please notify the court immediately.

Finally, I must instruct you that you are to reserve your judgment concerning a verdict in this case until after you have heard all the evidence and the instructions of law and the arguments of the attorneys, and have retired to the jury room to deliberate on your verdict with your fellow jurors.

The trial will now begin. First, each side may make an opening statement. An opening statement is neither evidence nor argument; it is an outline of what that party intends to prove, offered to help you follow the evidence.

Next, the plaintiff(s) will present his/her/their witnesses, and the defendant may cross-examine them. Then the defendant will present his/her/its witnesses, and the plaintiff(s) may cross-examine them.

After all the evidence is in, the court will give you instructions on the law, and the parties will present their closing arguments to summarize and interpret the evidence for you.

You will retire to deliberate on your verdict.