

CIVIL JURY INSTRUCTIONS
(BEFORE CLOSING ARGUMENTS)

Members of the jury: You have heard the evidence. Now I will instruct you, and next you will hear final arguments of counsel. The Court and the jury have separate functions: you decide the disputed facts, and the Court provides the instructions of law. It is your sworn duty to accept these instructions and to apply the law as it is given to you. You are not permitted to change the law or to apply your own concept of what you think the law should be.

Equality Under The Law

In deciding the facts of this case, you must not be swayed by bias or prejudice or favor as to either party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict based on the evidence.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. A company is entitled to the same fair trial at your hands as is a private person. Individuals and corporations stand equal before the law and are to be dealt with as equal in a court of justice.

Burden of Proof

The person who claims certain facts exist must prove them by a greater weight of the evidence. This duty is known as the burden of proof. The burden of proof here is on Plaintiff to prove the facts necessary for his damage claims by the greater weight, or preponderance, of the evidence.

Greater Weight of the Evidence

The greater weight of the evidence is evidence that you believe because it outweighs or overbalances in your mind the evidence opposed to it. This means the evidence is more probable, more persuasive, or of greater probative value. It is the quality of the evidence that must be weighed. Quality may, or may not, be identical with quantity or the greater number of witnesses. In determining whether an issue has been proved by a greater weight of the evidence, you should consider all the evidence, regardless of who produced it.

If the weight of the evidence is equally balanced, or if you are unable to determine which side of an issue has the preponderance, the party who has the burden of proof has not established such issue by the greater weight of the evidence.

Evidence

Evidence is all the testimony received from the witnesses, any exhibits admitted during the trial, and any facts stipulated by counsel. You must make your decision based only on the evidence you saw and heard here in Court. Do not let rumors, suspicions, or anything else you may have seen or heard outside this Court influence your decision in any way.

Evidence may be direct or circumstantial, or both.

Direct evidence is the testimony given by a witness who has seen or heard the facts to which he or she testifies. It includes exhibits admitted into evidence during the trial.

Evidence may also be used to prove a fact by inference. This is referred to as circumstantial evidence. "Circumstantial evidence" is the proof of facts by direct evidence from which you may infer other reasonable facts or conclusions.

If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence it was raining. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude it was raining.

You may infer a fact or facts only from other facts that have been proven by the greater weight of the evidence. You may not make one inference from another inference, but you may draw more than one inference from the same facts or circumstances. Direct evidence and circumstantial evidence are of equal weight.

Matters Not Evidence

Evidence does not include the formal papers filed on the Court docket or any statement of counsel made during the trial. The opening statements and the closing arguments of counsel are designed to assist you; they are not evidence.

Statements or answers ordered stricken, or to which the Court sustained an objection, or that you were instructed to disregard are not evidence and must be treated as though you never heard them.

You must not guess why the Court sustained the objection to any question or what the answer to such question might have been. You must not consider as evidence any suggestion included in a question that was not answered.

Credibility

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. To weigh the evidence, you must consider the credibility or believability of the witnesses. You will use the tests of truthfulness that you use in your daily lives. These tests include the appearance of each witness upon the stand; his or her manner of testifying; the reasonableness of the testimony; the opportunity he or she had to see, hear and know the things concerning which he or she testified; his or her accuracy of memory; frankness or lack of it; intelligence, interest and bias, if any; together with all the facts and circumstances surrounding the testimony. Use these tests and assign to each witness' testimony such weight as you think proper.

You are not required to believe the testimony of any witness simply because he or she was under oath. You may believe or disbelieve all or any part of the testimony of any witness. It is your duty to determine what testimony to believe and what testimony not to believe.

Some guides for evaluating the testimony include:

- Was the witness able to clearly see, hear or understand the events?
- How good was the witness' memory?
- Was there anything that may have interfered with the witness' ability to perceive or remember the events?
- How did the witness act while testifying?
- Did the witness have any relationship to either party, or anything to gain or lose from the case, that might influence his/her testimony?
- Was the testimony supported or contradicted by other evidence that you found believable?
- Was the testimony consistent with prior sworn statements?

Depositions

Some testimony was presented by way of video deposition. This evidence is to be considered by you the same as if the witness testified live in the courtroom.

Also, if prior sworn statements differ from testimony given in the courtroom by the same witness, you may consider the difference to test the credibility of that witness.

Exhibits

A number of exhibits and testimony relating to them have been introduced. You will determine what weight, if any, the exhibits should receive in light of all the evidence, no matter who produced the exhibit. The numbering or lettering of the exhibits that you take to the jury room may not follow consecutively. There are several reasons for this. Some exhibits may not have been offered, some may be duplicates, or the Court may have rejected the exhibit because of a legal or other ruling. Do not guess or draw any inference because you do not have a particular numbered exhibit.

Opinion Testimony

In this case, you heard [medical/engineering/accounting] opinion testimony. Such opinions are allowed by the Court if the witness, through study or experience, or both, has acquired skill that makes him or her better qualified than the average person to form an opinion.

However, it is for you, as triers of fact, to determine whether such opinion testimony is worthy of belief, considering the witness' relative qualifications, credibility, and believability. If you should decide that the opinion of a witness is not based on sufficient education or experience, or if you should conclude the reasons given in support are inadequate, or if you feel that the testimony is outweighed by other evidence, you may weigh the opinion accordingly or disregard the opinion entirely.

Some witnesses may have given opinions based on the testimony of other witnesses in the case, or based on assumed facts. It is for you to determine whether or not the assumed facts do apply, and to determine the effect or value of the answer in light of any facts that do not apply. In short, it is for you, as jurors, to determine whether the facts, on which any such opinion is based, have been established. The value of any opinion is no stronger than the facts on which it was based.

Remember that you alone decide how much of a witness' testimony to believe, and how much weight it deserves.

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This concludes the general instructions on certain preliminary matters -- including the burden of proof, evidence, and the credibility of witnesses. I will now give you the instructions of law on the specific issues in this case.

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Verdict Form and Questions

I will now walk you through the Jury Questions and then the Verdict forms.