

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

)	
)	
Plaintiffs,)	
)	
vs.)	No.
)	
)	
)	
Defendant.)	

STANDARD JURY INSTRUCTIONS

MEMBERS OF THE JURY:

These instructions will be in three parts: First, general rules about your duties as jurors; second, rules of law that you must apply in deciding whether the plaintiff has proved his/her case and whether defendant has proved his/her defenses; and third, some rules for your deliberation. A copy of these instructions will be available for you in the jury room.

I.

A. GENERAL INTRODUCTION -- PROVINCE OF THE COURT AND JURY

D&B 71.01

Now that you have heard the evidence and the argument, it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me.

Counsel have quite properly referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you are of course to be governed by the Court's instructions.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the

facts, but rather yours.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be governed by sympathy, prejudice or public opinion. All parties expect that you will carefully and impartially consider all of the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

B. INSTRUCTIONS APPLIED TO EACH PARTY

D&B 71.02

Unless otherwise stated, the jury should consider each instruction given to apply separately and individually to each plaintiff and to each defendant in the case.

C. ALL PERSONS EQUAL BEFORE THE LAW -- ORGANIZATIONS

D&B 71.04

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 of life. A corporation is entitled to the same fair trial at your hands as a private individual. All persons, including corporations, partnerships, and other organizations, stand equal before the law, and are to be

dealt with as equals in a court of justice.

D. MULTIPLE PLAINTIFFS

D&B 71.05

Although there are _____ plaintiffs in this action, it does not follow from that fact alone that if one is entitled to recover, all are entitled to recover. The defendant is entitled to a fair consideration of the defense as to each plaintiff, just as each plaintiff is entitled to a fair consideration of his claim against the defendant. Unless otherwise stated, all instructions given you govern the case as to each plaintiff.

E. EVIDENCE IN THE CASE -- STIPULATIONS

D&B 71.08

Unless you are otherwise instructed, the evidence in the case consisted of the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received in evidence, regardless of who may have produced them; and all stipulations of fact between the parties which have been read to you.

Statements and arguments of counsel are not evidence in the case.

Any evidence as to which an objection was sustained by the Court must be entirely disregarded.

F. BURDEN OF PROOF AND PREPONDERANCE OF THE EVIDENCE

D&B 72.01

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of his claim by a preponderance of the evidence. If the proof should fail to establish every essential element of plaintiff's claims by a preponderance of the evidence in the case, the jury should find for the defendant. To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds a belief that what is sought to be proved is more likely true than not true. Thus, preponderance of the evidence is the greater weight of the evidence; that is, evidence that you believe because it outweighs or overbalances in your minds the evidence opposed to it. A preponderance means evidence that 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 or exhibits.

As to certain affirmative defenses such as fraud, the burden of establishing the essential facts by a preponderance of the evidence is on the defendant as I will explain later.

In determining whether any fact in issue has been proven by a preponderance of the evidence in the case, the jury may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

The jury, however, may not engage in speculation or conjecture.

G. "IF YOU FIND" OR "IF YOU DECIDE"

D&B 72.02

When I say in these instructions that a party has the burden of proof on any proposition or use the expression "if you find" or "if you decide," I mean you must be persuaded, considering all the evidence in the case that the proposition is more probably true than not true.

H. EVIDENCE -- DIRECT, INDIRECT OR CIRCUMSTANTIAL

D&B 72.03

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. Direct evidence is testimony given by an eyewitness who has seen or heard the facts to which he or she testifies. Circumstantial evidence is the proof of facts or circumstances by direct evidence by which you may reasonably infer other related or connected facts which naturally and logically follow, according to the common experience of people. To infer, or to make an inference, is to reach a reasonable conclusion of fact which you may but are not required to make from other facts which you find have been established by direct evidence. Whether an inference is made rests entirely with you.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial. Just as in all other cases, there is no requirement that the plaintiff present direct evidence. The plaintiff may build a case entirely on circumstantial evidence. It is for you to determine how much weight to give to any evidence.

I. OPINION EVIDENCE - EXPERT WITNESS

D&B 72.08

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses." Witnesses who, by education and experience, have become expert in some art, science, profession or calling may state their opinions as to relevant and material matters in which they profess to be expert, and may also state their reasons for the opinion.

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 if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

J. CREDIBILITY OF WITNESSES - DISCREPANCIES IN TESTIMONY

D&B 73.01

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witnesses, or by the manner in which the witness testifies, or by the character of the

testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive and state of mind, and demeanor or manner while on the stand. Consider the witness's ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case, the manner in which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently, and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the

discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves. You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

K. IMPEACHMENT -- INCONSISTENT STATEMENTS

D&B 73.04

A witness may be discredited or impeached by contradictory evidence; or by evidence that at some other time the witness has said or done something, or has failed to say or do something which is inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it

deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony and other particulars, and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is knowingly done, if voluntarily and intentionally and not because of mistake or accident or other innocent reason.

L. IMPEACHMENT -- INCONSISTENT STATEMENTS OR CONDUCT --
CONVICTION OF FELONY

D&B 73.05

A witness may be discredited or impeached by contradictory evidence; or by evidence that at some other time the witness has said or done something, or has failed to say or do something which is inconsistent with the witness' present testimony, or by evidence that the witness has been convicted of a felony, that is, an offense punishable by a term of more than one year.

If you believe any witness has been impeached and thus

discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony and other particulars, and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is knowingly done, if voluntarily and intentionally and not because of mistake or accident or other innocent reason.

II. PROPOSED INSTRUCTIONS PREPARED BY LAWYER

DIRECTIONS TO LAWYERS CONCERNING
PREPARATION OF PROPOSED INSTRUCTIONS

PREPARE FOR INSERTION HERE YOUR PROPOSED INSTRUCTIONS CONCERNING THE CLAIMS AND DEFENSES, SPECIAL ISSUES AND DAMAGES IN THE FOLLOWING FORMAT AND SEQUENCE:

- A. Description of the plaintiff's claim(s), followed by
 - 1. Enumeration of the essential elements of the claim(s);
 - 2. Definition of key terms uses in enumerating the essential elements of the claim(s); and other special instructions, if any, necessary to further explain or qualify the claim(s).

- B. Description of the defendant's defense(s) and counterclaim(s), if any, followed by
 - 1. Enumeration of the essential elements of the defense(s) and counterclaim(s), if any;
 - 2. Definition of key terms used in enumerating the essential elements of the defense(s) and counterclaim(s); and other special instructions, if any, necessary to further explain or qualify the defense(s) and/or the counterclaim(s);
 - 3. Enumeration of the plaintiff's (and counterclaimant's) recoverable elements of damage and explanation, as appropriate, of each element.

NOTE: In submitting your proposed instructions, it is not necessary to duplicate or request the court's standard instructions that precede and follow this page. Those instructions will be given in every case, subject to the deletion of irrelevant instructions (e.g., delete expert instruction if no expert).

III.

A. VERDICT -- UNANIMOUS DUTY TO DELIBERATE

D&B 74.01

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty as jurors to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of 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 evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

B. EFFECT OF INSTRUCTIONS ON DAMAGES

D&B 74.02

The fact that I instruct you on damages should not be taken by you as indicating one way or the other whether plaintiff is entitled to recover anything. This is entirely for you to decide.

Any damages you award must have a reasonable basis in the evidence. They need not be mathematically exact, but there must be enough evidence for you to make a reasonable estimate of damages without speculation or guesswork.

C. ELECTION OF FOREPERSON -- VERDICT

D&B 74.05

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in court. A Jury Verdict Form [with special interrogatories] has been prepared for your convenience. You will take this form and a copy of these instructions with you to the jury room.

[PROPOSED JURY VERDICT FORM AND SPECIAL INTERROGATORIES AND INSTRUCTIONS FOR COMPLETING FORM TO BE PREPARED BY ATTORNEYS.]

[You will note that the interrogatories or questions call for either a "Yes" or "No" answer or a dollar amount. The answer to

each question must be the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided. As you will note from the wording of the special interrogatories, it will not be necessary to consider or answer question ___ if the answer to both questions ___ and ___ is "No".]

When the jury has completed the Jury Verdict Form [and special interrogatories], the foreperson will then date and sign the Jury Verdict Form as so completed, and the jury will then return it to the courtroom.

D. COMMUNICATIONS WITH THE COURT

D&B 74.08

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the marshal, signed by your foreperson, or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching the merits of the case, other than in writing, or orally here in open court.

Bear in mind also that you are never to reveal to any person,

not even to the Court, how the jury stands, numerically or otherwise, on the questions before you until after you have reached a unanimous verdict.