

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: xx-cv-xxxxx-CYC

Doe,

Plaintiff,

v.

Company A,

Defendant.

CLOSING JURY INSTRUCTIONS

Members of the Jury:

Now that you have heard all of the evidence, it is my duty to instruct you on the applicable law. In any jury trial there are, in effect, two judges. I am one of the judges, you are the other. I am the judge of the law. You, as jurors, are the judges of the facts. I presided over the trial and decided what evidence was proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

In explaining the rules of law that you must follow, first, I will give you some general instructions which apply in every civil case—for example, instructions about the burden of proof and insights that may help you to judge the credibility of witnesses. Then I will give you some specific rules of law that apply to this particular case and, finally, I will explain the procedures you should follow in your deliberations. These instructions will be given to you for use in the jury room, so you need not take notes.

PARTIES

The parties are John Doe, the plaintiff, and Company A, the defendant.

[Details of claims and defenses]

These are the issues you are to decide.

DUTY TO FOLLOW INSTRUCTIONS

You, as jurors, are the judges of the facts. But in determining what actually happened—that is, in reaching your decision as to the facts—it is your sworn duty to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. The attorneys may refer to the governing rules of law or these instructions during their closing arguments. If there is any difference between the law stated by the attorneys and these instructions, you must follow my instructions.

It is your duty to apply the law as I explain it to you, regardless of the consequences. However, you should not read into these instructions, or anything else I may have said or done, any suggestion as to what your verdict should be. That is entirely up to you.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. You must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That was the promise you made and the oath you took.

BURDEN OF PROOF

“Burden of proof” means the obligation a party has to prove his or her claims. The party with the burden of proof can use evidence produced by any party to persuade you. Plaintiff has the burden of proving his claims, which requires him to prove every essential element of the claims by a preponderance of the evidence. Defendant has the burden of proving each of the elements of its affirmative defenses by a preponderance of the evidence.

Preponderance of the evidence is evidence sufficient to persuade you that a fact is more likely present than not present. In other words, a preponderance of the evidence means such evidence as, when considered and compared with the evidence 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. This standard does not require proof to an absolute certainty, because proof to an absolute certainty is seldom possible in any case. If a party fails to prove its claim by a preponderance of the evidence, or if the evidence weighs so evenly that you are unable to say that there is a preponderance on either side, you must reject that claim or defense.

EVIDENCE—DEFINED

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way. You are not allowed to look at, read, consult, or use any material of any kind, including any newspapers, magazines, television and radio broadcasts, dictionaries, medical, scientific, technical, religious, or law books or materials, or the Internet in connection with your jury service. I want to emphasize that you must not seek or receive any information about this case from the Internet, which includes all social networking, Google, Wikipedia, blogs, and any other website. You are not allowed to do any research of any kind about this case.

Do not use any information from any other source concerning the facts or the law applicable to this case other than the evidence presented and the instructions that I give you. Do not do your own investigation about this case. You are not allowed to visit any places mentioned in the evidence during your deliberations.

The parties have stipulated to certain facts. A “stipulation” is an agreement between the parties to a case that certain facts are true. When the parties to a case stipulate or agree to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and regard the fact as proven without the presentation of any further evidence. Similarly, I have taken “judicial notice” of certain facts or events, the truth of which may not be legally questioned. You must accept these judicially noticed facts as evidence, and regard the facts as proven without the presentation of any further evidence. The evidence in this case includes only what the witnesses said while they were testifying under oath and the exhibits that I allowed into evidence.

Nothing else is evidence. The lawyers’ statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments

and questions are not evidence. It is the duty of the attorney on each side of a case to object when the other side offers testimony or an exhibit that the attorney believes is not properly admissible under the rules of law. Only by offering an objection can an attorney request and obtain a ruling from me on the admissibility of the evidence being offered by the other side. You should not be influenced against any attorney or the attorney's client because the attorney has made objections. Do not attempt to interpret my rulings on objections as somehow indicating how I think you should decide this case. I am simply making a ruling on a legal question. During the trial, the attorneys highlighted certain parts of some exhibits entered into evidence. However, it is for you to determine the significance, if any, of the highlighted parts.

During the trial, I did not let you hear the answers to some of the questions that the lawyers asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. And sometimes I ordered you to disregard things that you saw or heard, or I struck things from the record. You must completely ignore that. Do not even think about it. Do not speculate about what a witness might have said. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

EVIDENCE—DIRECT AND CIRCUMSTANTIAL—INFERENCES

There are, generally speaking, two types of evidence from which a jury may properly determine the facts of a case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, the proof of a chain of facts which point to the existence or non-existence of certain other facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence. The law simply requires that you find the facts in accord with all the evidence in the case, both direct and circumstantial.

You are to consider only the evidence presented during the trial and the reasonable inferences that may be drawn from that evidence. An inference is a deduction or conclusion that reason and common sense lead the jury to draw from other facts that have been proved.

Any finding of fact you make, however, must be based on probabilities, not possibilities. You should not guess or speculate about a fact.

It is also your duty to base your verdict solely upon the evidence, without sympathy, prejudice, or bias. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That was the promise you made and the oath you took.

CREDIBILITY OF WITNESSES

In deciding the facts of this case, 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 of the witnesses and the weight to be given their testimony. You should take into consideration their means of knowledge, strength of memory and opportunities for observation; the reasonableness or unreasonableness of their testimony; the consistency or lack of consistency in their testimony; their motives; whether their testimony has been contradicted or supported by other evidence; their bias, prejudice, or interest, if any; their manner or demeanor upon the witness stand; and all other facts and circumstances shown by the evidence which affect the credibility of the witnesses.

Based upon these considerations, you may believe all, part, or none of the testimony of a witness.

The weight of evidence is not necessarily determined by the number of witnesses testifying to a particular fact. The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case or who may appear to have some knowledge of the matters at issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned during the trial.

IMPEACHMENT BY PRIOR INCONSISTENCIES

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 had failed to say or do something, that is inconsistent with the witness's testimony at trial.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

IMPEACHMENT BY EVIDENCE OF UNTRUTHFUL CHARACTER

You have heard the testimony of [name of witness], who was a witness in the [Plaintiff's
pr Defendant's] case. You also heard testimony from others concerning [their opinion about his
character for truth- telling] [his reputation, in the community where he lives, for telling the truth].
It is up to you to decide from what you heard here whether [name of witness] was telling the
truth in this trial. In deciding this, you should bear in mind the testimony concerning his
[reputation for] truthfulness.

EXPERT WITNESS

The rules of evidence ordinarily do not permit witnesses to testify as to their own opinions or their own conclusions about important questions in a trial. An exception to this rule exists as to those witnesses who are described as “expert witnesses.” An “expert witness” is someone who, by education, background, training, or experience, may have become knowledgeable in some technical, scientific, or very specialized area. If such knowledge or experience may be of assistance to you in understanding some of the evidence or in determining a fact, an “expert witness” in that area may state an opinion as to a matter in which he or she claims to be an expert.

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

As I have told you several times, you, the jury, are the sole judges of the evidence and the facts of this case.

SUMMARIES AND CHARTS
(Not Received in Evidence)

Certain charts and summaries have been shown to you to help explain the evidence in this case. Their only purpose is to help explain the evidence. These charts and summaries are not evidence or proof of any facts.

DUTY TO FOLLOW INSTRUCTIONS

These instructions contain the law that you must use in deciding the case. No single instruction states all the applicable law. All the instructions must be read and considered together.

You must not be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what the law should be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court.

The Court does not, by these instructions, express any opinions as to what has or has not been proved in the case, or to what are or are not the facts of the case.

DUTY TO DELIBERATE—VERDICT FORM

After the Closing Arguments, [Courtroom Deputy] will escort you to the jury deliberation room and provide each of you with a copy of the instructions that I have just read. All of the exhibits admitted into evidence will also be placed in the jury room for your review. The original forms of the jury instructions and exhibits are a part of the court record and thus please do not place any marks or notes on them. The jury instructions labeled “copy” may be marked or used in any way you see fit. As mentioned in my preliminary instructions, you will not have a written transcript of the testimony and argument to consult during your deliberations.

When you go to the jury room, you should first select a foreperson, who will help to guide your deliberations and will speak for you here in the courtroom. The second thing you should do is review the instructions. Not only will your deliberations be more productive if you understand the legal principles upon which your verdict must be based, but for your verdict to be valid, you must follow the instructions throughout your deliberations. Remember, you are the judges of the facts, but you are bound by your oath to follow the law stated in these instructions.

To reach a verdict, whether it is for Plaintiff or Defendant, all of you must agree. Your verdict must be unanimous. Your deliberations will be secret. During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. Nor may you use electronic means, such as a cell phone, tablet, computer, or the Internet, to investigate any information about the case because it is important that you decide this case based solely on the evidence presented during the trial. Information on the Internet or available through social media might be wrong, incomplete, or inaccurate. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process. I expect you

will inform me immediately if you become aware of another juror's violation of these instructions.

If you took notes during the trial, you may use those notes during your deliberations. However, your notes should not be substituted for your memory. Remember, notes are not evidence. If your memory should differ from your notes (or someone else's notes), then you should rely on your memory and not the notes. You should give no more and no less weight to the views of a fellow juror because that juror did or did not take notes.

You must consult with one another and deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. You may deliberate only while all jurors are present together in the jury room. You must suspend your deliberations any time all jurors are not present together in the jury room.

If you should fail to agree upon a verdict, the case is left open and must be tried again. Obviously, another trial would require the parties, the Court, and the jurors to make another large investment of time and effort, and there is no reason to believe that the case can be tried again by either side better or more exhaustively than it has been tried before you. It thus is important that you attempt to reach a unanimous verdict, but, of course, only if each of you can do so after having made your own conscientious decision. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs 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; you are not partisans. Your sole interest is to seek the truth from the evidence in the case.

You will receive a document called a Jury Verdict Form. You are instructed to answer the questions in the Jury Verdict Form as directed in that form. You must reach unanimous agreement on the answers to each of the questions you are directed in the form to answer. As you will note from the wording of the questions, it may not be necessary for you to consider or answer every question.

Upon arriving at an agreement, your Foreperson will insert each answer on the Jury Verdict Form, then your Foreperson will date the Jury Verdict Form, sign it, and ask all of the other jurors to sign it. Your signature on the Jury Verdict Form is simply verification of your agreement with the unanimous decision on the fact questions presented to you in this case.

A Court Security Officer will be seated outside the jury room during your deliberations. After you have filled out the Jury Verdict Form, your Foreperson should advise the Court Security Officer that you have reached a verdict.

COMMUNICATION WITH THE COURT

If you want to communicate with me at any time during your deliberations, please write down your message or question on the form provided and give it to the Court Security Officer seated outside the jury room, who will bring it to my attention. I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I caution you, however, that with any message or question you might send, you should not tell me any details of your deliberations or indicate how many of you are voting in a particular way on any issue. No member of the jury should hereafter attempt to communicate with me except by signed writing, and I will communicate with any member of the jury on anything concerning the case only in writing or orally here in open court.

If you send a note to me containing a question or request for further direction, please bear in mind that responses may take considerable time and effort. Before giving an answer or direction I must first notify counsel and bring them back to the court. I must confer with them, listen to arguments, research the legal authorities, if necessary, and reduce the answer or direction to writing.

There may be some questions that, under the law, I am not permitted to answer. If it is improper for me to answer the question, I will tell you that. Please do not speculate about what the answer to your question might be or why I am not able to answer a particular question. You will note from the oath that will be taken by the Court Security Officer that he or she, as well as all other persons, are forbidden from communicating in any way or manner with any member of the jury on any subject touching the merits of the case. 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.

I want to caution you again, that you may not conduct any outside research or consider any information except the evidence introduced at trial. Finally, let me remind you again that nothing I have said in these instructions, nor anything I have said or done during the trial, was meant to suggest to you what I think your decision should be. That is your exclusive responsibility.