

PRELIMINARY JURY INSTRUCTIONS

Civil Action No. XX-cv-0XXXX-CYC

Doe v. Company A

Members of the Jury:

Before we begin the trial of the case you heard about during jury selection, I will provide you some preliminary instructions to help you understand how the trial will proceed and how you must conduct yourselves during the trial. At the end of the trial, I will give you more detailed guidance on the law and on how you will go about reaching your decision.

John Doe brings this civil lawsuit against Company A, which I will refer to simply as Company A. I will sometimes refer to Mr. Doe as the Plaintiff. Mr. Doe is represented by [Lawyers]. I will sometimes refer to Company A as the Defendant. Company A is represented by [Lawyers].

[short description of lawsuit and claims]

“Burden of proof” means the obligation a party has to prove his or her claims or defenses. The party with the burden of proof can use evidence produced by any party to persuade you. Mr. Doe has the burden of proving his claims, which requires him to prove every essential element of the claims by a preponderance of the evidence. Company A 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. Any finding of fact you make must be based on probabilities, not possibilities. You should not guess or speculate about a fact. If a party fails to prove its claim or defense 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.

In order for Mr. Doe to prove his claim for breach of the underinsured motorist insurance contract and recover from Company A, he must prove the following by a preponderance of the evidence:

1. Company A entered into a contract with Mr. Doe to provide underinsured motorist benefits;
2. Company A failed to comply with its obligations under the contract in handling Mr. Doe's claim for underinsured motorist benefits; and
3. Mr. Doe substantially complied with his obligations under the contract.

In order for Mr. Doe to prove his claim for bad faith breach of contract and recover from Company A, he must prove the following by a preponderance of the evidence:

1. Mr. Doe had injuries, damages or losses from the November 1, 2016 motor vehicle accident in excess of the amount he recovered from the driver who caused the accident;
2. Company A acted unreasonably in denying or delaying Mr. Doe's claim for underinsured motorist benefits under the insurance policy;
3. Company A knew that its conduct was unreasonable or Company A recklessly disregarded the fact that its conduct was unreasonable; and

4. Company A's unreasonable conduct was a cause of Mr. Doe's injuries, damages, or losses.

In order for Mr. Doe to prove his claim for unreasonable delay or denial in the payment of benefits and recover from Company A, he must prove the following by a preponderance of the evidence:

1. Company A denied or delayed payment of benefits to Mr. Doe; and
2. Company A's denial or delay of payment was without a reasonable basis.

If Mr. Doe is successful in proving one or more of his claims, you will be called upon to consider Company A's affirmative defense that Mr. Doe failed to mitigate his damages. To succeed on this affirmative defense, Company A must prove by a preponderance of the evidence both:

1. Mr. Doe failed to seek such medical care for his injuries as a reasonable person would have sought under similar circumstances; and
2. Mr. Doe had some increased injuries, damages, and/or losses because he did not seek the medical care that a reasonable person would have sought under similar circumstances.

Once I finish providing you these instructions, counsel for the parties will deliver their opening statements. Counsel for Mr. Doe will tell you about the evidence that Mr. Doe intends to put before you during this trial. The opening statement, however, is not evidence. Its purpose is only to help you understand what the evidence will be. It is a road map to show you what is ahead. After Mr. Doe's opening statement, counsel for Company A will make an opening statement, which also is not evidence.

After these opening statements, evidence will be presented from which you will have to determine the facts. The evidence will consist of the testimony of the witnesses, documents, and other things received into the record as exhibits, and any facts about which the lawyers agree or to which they stipulate.

Mr. Doe will offer his evidence first and counsel for Company A may cross-examine the witnesses. After Mr. Doe has finished presenting his evidence, Company A may choose to present evidence, but it is not required to introduce any evidence or call any witnesses, because, as explained earlier, Mr. Doe has the burden of proving his claims by a preponderance of the evidence. Counsel for Mr. Doe may cross-examine any witnesses called by Company A. If Company A submits evidence, Mr. Doe may then introduce rebuttal evidence. Due to the witnesses' schedules, Company A may call a witness during Mr. Doe's presentation of evidence or Mr. Doe may call a witness during Company A's presentation of evidence. Similarly, because some of Company A's witnesses are the same as Mr. Doe's witnesses, counsel for Company A may directly examine Mr. Doe's witnesses during Mr. Doe's case. You are to treat this testimony the same as other testimony offered by that party during its presentation of evidence.

At times during the trial, a lawyer may make an objection to a question asked by another lawyer, or to an answer by a witness. This simply means that the lawyer is requesting that I make a decision on a particular rule of law. Do not draw any conclusion from such objections or from my rulings on the objections. When I "sustain" an objection, I am excluding that evidence from this trial for a good reason. When I "overrule" an objection, I am permitting that evidence to be admitted into evidence. If I sustain an objection to a question, the witness may not answer it. Do not attempt to guess what

answer might have been given if I had allowed the answer. If I tell you not to consider a particular statement, you may not refer to that statement in your later deliberations. Similarly, if I tell you to consider a particular piece of evidence for a specific purpose, you may consider it only for that purpose. If I overrule the objection, treat the answer as any other. It is a party's duty to object when the other side offers testimony or other evidence that the party believes is inadmissible. You should not be unfair or partial against an attorney or the attorney's client, because the party has made objections. You should not infer or conclude from any ruling or other comment I make that I have any opinions on the merits of the case favoring one side or the other. I do not favor one side or the other.

During the course of the trial, I may have to interrupt the proceedings to confer with the attorneys about the rules of law that should apply. Sometimes we will talk briefly, at the bench. But some of these conferences may take more time, so I will excuse you from the courtroom. I will try to avoid such interruptions whenever possible, but please be patient even if the trial seems to be moving slowly because conferences often actually save time in the end. You should not speculate about the content of these conferences, try to overhear them, or draw any inferences about the case from them.

Ordinarily, the attorneys will develop all the relevant evidence that will be necessary for you to reach your verdict. However, during the course of the trial, I may ask a question of a witness. If I do, that does not indicate I have any opinion about the facts in the case but am only trying to bring out facts that you may consider. You should not place any emphasis on any question asked by me or try to draw any conclusions about my views on the case based upon any such questions.

You are to consider all the evidence received in this trial, but you may only consider 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. 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 that 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 will be 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. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy.

Ultimately, it will be up to you to decide what evidence to believe and how much of any witness's testimony to accept or reject. During the trial, however, you should keep an open mind and should not form or express any opinion about the case until you have heard all of the testimony and evidence, the attorneys' arguments, and my closing instructions to you on the applicable law.

After you have heard all the evidence on both sides, I will instruct you on rules of law that you will use to reach your verdict. Mr. Doe and Company A will then each be given time for their final arguments.

During the course of the trial, you should not talk with any witness, with either of the parties, or with any of the lawyers at all. Similarly, the witnesses, parties, and attorneys are not allowed to speak with you during the trial. If you see them at recess or pass them in the halls and they do not speak to you, they are not being rude or unfriendly; they are simply following the law. In addition, during the course of the trial you must not talk about the trial or any of the participants in the trial with anyone else, including your family, friends, and fellow jurors. Do not discuss the case or any of the parties, witnesses, or attorneys with anyone or provide any information about the trial or the participants to anyone outside the courtroom until the verdict is received. Do not use the Internet, your mobile devices, social media, or any other form of electronic communication to research or provide any information about the trial and its participants. Simply put, do not communicate with anyone or conduct your own research regarding the trial or its

participants until after your verdict is received. You may only tell people that you are a juror in a case and that I have instructed you not to tell them anything else about the case until I have discharged you.

Further, you should not make up your own mind about what the verdict should be or discuss this case among yourselves until you have heard all of the evidence, have been instructed on the law, and have gone to the jury room to make your decision at the end of the trial. It is important that you wait until all the evidence is received and you have heard my instructions on the controlling rules of law before you reach any conclusions or deliberate among yourselves. Keep an open mind until then. Allow me to emphasize that, during the course of the trial, you will receive all the evidence you properly may consider to decide the case. Because of this, you should not attempt to gather any information or do any research on your own. Do not attempt to visit any places mentioned in the case, either actually or on the Internet, and do not in any other way try to learn about the case outside the courtroom.

Violation of these instructions could cause a mistrial, meaning all of our efforts over the course of the trial would have been wasted and we would have to start all over again with a new trial before a new jury. If you were to cause a mistrial by violating this order, you could be subject to paying all the costs of these proceedings and you could also be punished for contempt of court. I expect you will inform me immediately if you become aware of another juror's violation of these instructions.

The court reporter will be making stenographic notes of everything that is said during the trial. This is basically to assist in the resolution of any appeals. However, a typewritten copy of the testimony will not be available for your use during deliberations,

so please listen to the evidence carefully. Any exhibits received into evidence, however, will be available to you during your deliberations.

If you would like to take notes during the trial, you may. On the other hand, you are not required to take notes. If you do decide to take notes, be careful not to get so involved in note taking that you become distracted, and remember that your notes will not necessarily reflect exactly what was said, so your notes should be used only as memory aids. Therefore, you should not give your notes precedence over your independent recollection of the evidence. You should also not be unduly influenced by the notes of other jurors. In your deliberations, give no more and no less weight to the views of a fellow juror because that juror did or did not take notes. If you do take notes, leave them in the jury room at night and do not discuss the contents of your notes until you begin deliberations. We will make sure the jury deliberation room is locked when you leave in the evening and unlocked before you arrive in the mornings.

Now that the trial has begun you must not discuss the case or its participants with anyone and must not hear or read about it in the media or on the Internet. The reason for this is that your decision in this case must be made solely on the evidence presented at the trial.

With that introduction, counsel for Mr. Doe may present his opening statement.