INTRODUCTORY JURY INSTRUCTIONS - CIVIL

INSTRUCTION NO. 1

Members of the jury: Now that you have been sworn, I will give you some preliminary instructions to help guide you during the course of the trial.

The trial begins with Opening Statements from each side's attorney, first from the Plaintiff(s), and then from the Defendant(s). These statements are not evidence. Think of these statements as each side giving you a general outline of what they expect to present during the trial, offered to help you understand the evidence as it comes in.

Following opening statements, the Plaintiff(s) will begin presenting his/her/their evidence. The Plaintiff(s) will call one or more witnesses to testify. Counsel for the Plaintiff(s) will ask the witness questions, a process that is called "direct examination." When the Plaintiff(s) concludes the direct examination, counsel for the Defendant(s) will have the opportunity to ask the witness questions in what is called "cross-examination." Counsel for the Plaintiff(s) will then have an opportunity to conduct what is called "re-direct examination" of the witness. During these phases, counsel may also ask the witness to identify documents or other physical items and may offer these items as evidence. I will rule on whether these items can or cannot be admitted.

When the Plaintiff(s) has/have presented all of the evidence he/she/they intends to put on, the Plaintiff(s) will announce that he/she/they "rests." At this point, the Defendant(s) have an opportunity to present evidence. If the Defendant(s) does so, he/she/they will proceed through the same process I have just described.

When the Defendant(s) is/are finished presenting evidence, he/she/they will "rest" as well. At that point, the Plaintiff(s) will have a final opportunity to present evidence in "rebuttal" to evidence presented by the Defendant(s).

After all the evidence has been presented, I will give you concluding instructions as to law and the process you should use in considering the evidence. The attorneys then will present closing arguments. In these arguments, the attorneys will review the evidence that has been presented, explain what conclusions they believe you should draw from that evidence, and otherwise explain their view of the case to you. The Plaintiff(s) will present his/her/their closing argument first, followed by the Defendant(s), and the Plaintiff(s) has/have the opportunity to have the final word.

Following closing arguments, you will retire to the Jury Room to deliberate on your verdict.

INSTRUCTION NO. 2

As I mentioned in the jury selection process, in a jury trial the jury and the judge work as a team, each performing different jobs.

Jurors have four tasks: 1) to listen to and review all of the evidence; 2) to decide the facts in this case – that is, what actually happened; 3) to apply the law to the facts; and 4) to reach a decision as to all claims and affirmative defenses. Your decision is called a verdict. In reaching your verdict, you must assess the evidence and follow the law whether you agree with it or not. Nothing I say or do during the course of the trial is intended to indicate, or should be understood by you as indicating what your verdict should be.

As the judge, I must ensure the trial process moves smoothly and properly, determine what law applies, and instruct you as to the law. During the trial, the attorneys may object to questions asked, evidence offered, or other matters. I will rule upon these objections. You might analogize my rulings to a referee's calls made during a football game as to whether a ball is in or out of bounds. If I find that the evidence is admissible, it is "in bounds," and something that you may consider. If I find that the evidence is not admissible, it is "out of bounds" and something that you cannot consider.

At times you may be excused from the courtroom or the attorneys may come to the bench for a private conference. We will try to minimize any inconvenience to you, but these conferences are a natural and essential part of the trial process. The attorneys will be addressing issues such as which order witnesses will be presented in, whether the parties can agree on certain facts, the applicable law, and so on.

INSTRUCTION NO. 3

You listen to and review the evidence presented during a trial in order to determine the facts – that is, what happened. For example, in a traffic accident case parties might disagree as to whether a traffic light was red or green when a car went through an intersection. One witness testifies that the light was red; another witness testifies that the light was green. You, as jurors, would evaluate the testimony of these witnesses and all other evidence presented in order to decide whether the light was red or green.

Ordinarily, the form of evidence presented will be witness testimony, documents, and other things received as exhibits. In some cases, I may also inform you of certain facts that the lawyers agree are true or facts that I will instruct you treat as true.

There are two kinds of evidence - direct and circumstantial. You may consider both kinds and neither is given more weight than the other.

Direct evidence is direct proof of a fact – for example, by testimony of a person who saw an event, heard a statement, or felt a sensation.

Circumstantial evidence is evidence that suggests the existence of a fact. As an example of circumstantial evidence, please imagine that a person walks into the entry way of a building carrying an umbrella and wearing a wet raincoat. You might reason, based on what you see, that it is raining outside. There is no direct evidence that it is raining – you cannot see it raining and the person who has walked in has not told you that it is raining – but based on your experience, you draw an inference from the wet raincoat and umbrella. However, you could reach another conclusion from the wet raincoat and umbrella. Perhaps, you heard someone say that the sprinklers were running outside the building. As a result you might conclude that the sprinklers are a more reasonable explanation for the wet coat than a thundershower.

You make decisions based on direct and circumstantial evidence every day, and should use your experience in everyday life to help you make your decision here.

It will be up to you to decide which witnesses to believe and which not to believe and how much of any witness's testimony to accept or reject. You should use the same tools, observations, and methods you use in your everyday life to help you decide who should be believed and who should not. However, because you will only hear one witness at a time, you should wait until you have heard all of the evidence before you make up your mind as to whether to believe the testimony of any witness and before you decide about the existence of any particular fact.

INSTRUCTION NO. 4

There are certain things, however, that are **not evidence,** and you **may not** consider these things in reaching your verdict.

1. Statements, arguments, questions or objections by the attorneys **are not evidence.** In making their Opening Statements or Closing Arguments, in posing questions to witnesses, and in making and responding to objections, lawyers may assert certain facts or describe certain events certain ways. A lawyer's description of facts or events is not evidence that you should consider, because a lawyer is not a witness, and a lawyer's statement is not testimony. If a lawyer's description of a particular fact or event is different from that which you heard from a witness, understand that it is the witness's version of the fact or event, not the lawyer's, that is the evidence you may consider.

2. If I tell you to disregard a particular statement by a witness, or disregard some document or item, that statement or item is **not evidence**. You must put that statement or item out of your mind and not consider it for any purpose. Do not be influenced by any evidentiary objection, my ruling on it, or the frequency of objections made by any attorney. If I sustain the objection, you should ignore the answer to the question; if I overrule the objection, treat the answer like any other. I may in some instances instruct you that the evidence can be received for a particular purpose, only. In that case, you must consider it only for the particular purpose I have specified.

3. Anything you see or hear outside the courtroom **is not evidence.** You must limit yourself to the evidence presented here in the courtroom.

4. During the course of the trial, people may enter and leave the courtroom or counsel tables. It is not unusual for attorneys or parties to have to stand up, move about the room, confer

with others, or even leave the room to attend to certain matters. You should not concern yourself with this - **it is not evidence**.

INSTRUCTION NO. 5

Many, if not all of you, have watched portions of a trial on TV or in the movies. Some of you may have served on prior juries or watched a live trial. Those of you who have had both experiences will undoubtedly note that there is a difference between them.

TV and movie trials are designed to entertain and the trial scenes often are used to solve a mystery or to create drama.

That is not the function of a real trial. A real trial is a search for truth -- truth as to the facts upon which the parties do not agree. Therefore, there will be moments when the trial process may seem dull and boring compared to what you see on TV or in the movies. I ask nonetheless that you pay careful attention. If you require a recess, you may signal the courtroom deputy by raising your hand.

In addition, you may feel that you have not heard the whole story. That may be true because you are asked only to resolve discrete issues. Please be assured that the parties will have presented the best evidence they have as to those issues. Sometimes the issues will change during trial. The verdict form and jury instructions will define the issues you need to determine and give you the legal framework so you can apply the law.

INSTRUCTION NO. 6

As you know, this is a civil case. The Plaintiff(s) has/have the burden of proving all of the required elements of his/her/their case by a preponderance of the evidence. This means that the evidence must be sufficient to convince you that what the Plaintiff claims is "more likely than not" to have occurred. If you think of the "scales of justice," the Plaintiff's evidence must be enough to tip the scale somewhat to his/her/their side in order to prevail. It is **not sufficient** for the Plaintiff(s) to prove that his/her/their version of the events **might** be true, or even to prove that it is **as likely** to be true as another version. If the Plaintiff(s) fails to meet this burden, your verdict must be for the Defendant(s).

Those of you who have been involved in a criminal case will have heard of "proof beyond a reasonable doubt." That standard does not apply in this case unless you are specifically instructed. Unless you are told to do so, do not use it.

INSTRUCTION NO. 7

Now, let me share a few words about your conduct during the case.

1. **You may take notes during the trial.** You have a notebook with a pad of paper and a pencil/pen for that purpose. Unless instructed to the contrary, the notebook and pad should be left on your seat anytime you leave the courtroom. You may use your notes to help you recall evidence when you deliberate, but do not rely on your notes or those taken by a fellow juror if the notes do not agree with your recollection. Everyone takes notes in different formats, levels of detail, and of different things, and they are only to be used as an aid to your memory as to what you saw and heard. Listen carefully. Do not assume that you will have a record of any testimony presented in the courtroom during your deliberations.

2. **You will not be able to ask questions of the witnesses or their attorneys**. If you have problem or a particular need, please let our Courtroom Deputy know.

3. Consistent with the solemn oath that you just took, there are certain restrictions that you must abide by. During the trial **you are not to communicate about the case with anyone or permit anyone to communicate with you.** This means that you cannot discuss the case with your co-jurors until the trial is over and you begin deliberations. You are not to communicate about the case with anyone else (spouse, family, friend, or anyone else) until after the jury has reached its verdict and you have been discharged.

This prohibition also applies to electronic communications. You may not post any information on the internet or through any other electronic medium about your participation on this jury or about this trial. This means that you may not use social media or email, tweet, text or use any other form of electronic communication to identify the trial, to disclose the identity of any person involved in the trial (other jurors, attorneys, parties, or witnesses), or to disclose the nature

of the controversy, what occurs in the trial or what you or others think about the evidence presented. Similarly, do not read or listen to anything reported by the media or press that relates to this case -- this includes newspapers, TV, radio, or internet commentary.

If you receive any communication about the trial, from any person or through any medium, tell the Courtroom Deputy, who will tell me.

4. **Do not conduct any research or make any investigation about the case**. Do not consult books, visit sites or search on the internet for information about any party, counsel, witness, event or other information concerning this controversy or trial. To do so would violate the solemn oath that you took to limit yourself to the evidence presented in the courtroom.

5. **Keep an open mind and do not form any opinion until all the evidence has been presented and you begin deliberations with your co-jurors.** Once you begin deliberations, you may only discuss the case if all jurors are present.