

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

v.

)
) No.
) JUDGE CAMPBELL
)
)

CIVIL JURY CHARGE

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I. Introduction

Members of the jury, you have now heard all the evidence in the case, as well as the closing arguments. Now it is time for me to instruct you about the law that you must follow in deciding this case.

I will start by explaining your duties as jurors;

Then, I will explain the theories of the parties;

Then, I will explain certain principles of law;

Then, I will explain the elements of the Plaintiff's claims;

Then, I will explain the Defendant's defenses to the Plaintiff's claims;

Then, I will explain certain general rules that apply in every civil case;

And last, I will explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

Please listen carefully.

II. Jurors' Duties

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in Court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you and apply it to the facts. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial and these instructions. All the instructions are important, and you should consider them together as a whole.

The parties have talked about the law during their arguments. But if what they said is different from what I say, you must follow what I say. What I say about the law controls.

Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way.

III. Theories of the Parties

I will now instruct you on the specific claims and defenses made by the parties in this case and the law that applies to the case. As members of the jury, it is your duty to determine the facts and consider whether they support the theories of the Plaintiff or the theories of the Defendant. In reaching your conclusions, you are to apply the rules of law that I provide, to the facts you ascertain from the evidence which has been presented in Court.

(1) The Plaintiff's Theory

The following is the Plaintiff's theory of the case.

[insert from pretrial order]

(2) The Defendant's Theory

The following is the Defendant's theory of the case.

[insert from pretrial order]

IV. Burden of Proof

Now that you have heard the parties' respective theories, there are several principles of law that I must explain to you. You must apply these rules of law to the facts as you find them.

The Plaintiff has the burden of proof in this case. The party who has the burden of proof must carry that burden by a preponderance of the evidence. This means, simply, the greater weight of the evidence. It may be helpful to envision a set of balancing scales. After considering all the proof on a particular element of the Plaintiff's case, the scales must be tipped in favor of the Plaintiff on that issue, be it ever so slightly, for the Plaintiff to prevail on that issue.

A preponderance of the evidence, thus, 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. In other words, to establish a claim by a "preponderance of the evidence" merely means to prove that the claim is more likely so than not so.

In determining whether any fact in issue has been proved by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

V. Substantive Law

[insert case specific instructions]

VI. General Rules

(1) 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.

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. My legal rulings are not evidence. And my comments and questions are not evidence. The opening and closing statements are not evidence. Questions asked by the lawyers of witnesses are not evidence.

During the trial I did not let you hear the answers to some of the questions that were asked. You must completely ignore those questions. Do not even think about them. Do not speculate about what a witness might have said. They are not evidence, and you are bound by your oath not to let them influence your decision in any way.

Make your decision based only on the evidence, as I have defined it here, and nothing else.

(2) Consideration of Evidence

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

(3) Direct and Circumstantial Evidence

Now, some of you may have heard the terms "direct evidence" and "circumstantial evidence."

Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. 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 that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one. Neither does the law say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

(4) Evidence for a Limited Purpose

Some evidence is admitted for a limited purpose only. If I instructed you that an item of evidence has been admitted for a limited purpose, then you must consider it only for that limited purpose and for no other.

(5) Depositions - Use as Evidence

During the trial of this case, certain testimony has been presented to you by way of deposition, consisting of sworn, recorded answers to questions asked of the witness, in advance of the trial, by one or more of the attorneys for the parties to the case. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand, may be presented in writing or on a video recording under oath.

Such testimony is entitled to the same consideration, and is to be judged as to credibility, weighed and otherwise considered by the jury, in so far as possible, in the same way as if the witness had been present and had testified from the witness stand.

(6) Credibility of Witness

Now, I have said that 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 or "believability" of each witness and the weight to be given to that witness' testimony. In weighing the testimony of a witness, you should consider the circumstances under which each witness has testified. Consider the witness' manner of testifying and the opportunity to observe or acquire knowledge concerning the facts about which the witness testified. Consider the witness' candor, fairness and intelligence; and the extent to which the witness has been supported or contradicted by other credible evidence. Consider also any relationship which the witness may have to the Plaintiff or the Defendant; how the witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case. 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.

A witness may be discredited or "impeached" by contradictory evidence, by a showing that the witness testified falsely concerning a material matter, 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 that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

Discrepancies in a witness' testimony or between his testimony and that of others do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is also possible that two persons witnessing an incident or a transaction may see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

(7) Expert Testimony

You have also heard the testimony of expert witnesses. An expert witness is one who possesses special or technical knowledge or skill upon the subject about which the witness testifies, that is, a subject with which ordinary people are not familiar. An expert witness differs from the ordinary witness in that an expert is permitted to express opinions as to the results of proven facts, although an expert witness may also testify to the facts themselves, as any other witness.

Expert opinions are not to be accepted as facts. You should weigh carefully those opinions by considering the expert's training, experience, and sources of knowledge, as well as the expert's prejudices, if any appear.

Expert witnesses are frequently paid special compensation by the party for whom they testify. Such compensation is entirely proper. Yet, because of it, you should receive the expert's testimony with caution and weigh it carefully.

When there is a conflict between expert testimony and testimony as to the facts, you must determine the relative weight of the evidence. You are not bound to accept expert testimony in preference to other testimony, and you may consider the facts upon which the expert relied in reaching opinions or conclusions. If you find that the expert's opinions are inconsistent with proven facts, you may disregard the testimony of the expert completely.

(8) Potential Witnesses & Exhibits

The law does not require a 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 in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in this case.

(9) Statements of Counsel

You must not consider as evidence any statements of counsel made during the trial.

As to any question to which an objection was sustained, you must not speculate on what the answer might have been or on the reason for the objection, and you must assume that the answer would be of no value to you in your deliberations.

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken out by the court; such matter is to be treated as though you had never known it.

You must never speculate to be true any insinuation suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

(10) Lawyers' Objections

The lawyers objected to some of the things that were said or done during the trial. Do not hold that against either side. They have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.

And do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case. Remember that your decision must be based only on the evidence that you saw and heard here in Court.

Remember also that any statements, objections or arguments made by the lawyers are not evidence in the case. Lawyers try to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case.

VII. Deliberations and Verdict

(1) Introduction

That concludes the part of my instructions explaining the rules for considering the testimony and evidence. Now let me finish up by explaining some things about your deliberations in the jury room and your possible verdicts.

The first thing that you should do in the jury room is choose someone to be your foreperson. You may select the foreperson in any fair and reasonable way. The foreperson shall preside over your deliberations and speak for the jury in the Courtroom when you have reached your verdict. The case should not be decided simply on what the foreperson wants. You each must exercise your independent judgment. The foreperson's opinion carries no more weight than any other juror's opinion.

Once you start deliberating, do not talk to the court security officer, or to me, or to anyone else except each other about the case. If you have any questions or messages, you must write them down on a piece of paper, sign them, and then give them to the court security officer. The officer will give them to me, and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take me some time to get back to you. Any questions or messages normally should be sent to me through your foreperson and must be in writing.

One more thing about messages. Do not ever write down or tell anyone how you stand on your votes. That should stay secret until you are finished.

(2) Experiments, Research, and Investigation

Remember that you must make your decision based only on the evidence that you saw and heard here in Court. You may consider the exhibits admitted into evidence. Do not try to gather any information about the case on your own while you are deliberating.

For example, do not conduct any experiments inside or outside the jury room; do not bring any books with you to help you with your deliberations, and do not conduct any independent research, reading, or investigation about the case. You will be permitted to take with you any notes you may have taken during the course of the trial.

Make your decision based only on the evidence that you saw and heard here in Court.

(3) Unanimous Verdict

Your verdict, whether it is for the Plaintiff or for the Defendant, must be unanimous. In other words, every one of you must agree on the verdict.

After you reach a verdict, and it is announced in the courtroom, I will ask each of you if it is in fact your verdict. This is to make sure the verdict is, in fact, unanimous.

(4) Duty to Deliberate

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that -- your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

Listen carefully to what the other jurors have to say, and then decide for yourself if the Plaintiff has proved his claim for damages against the Defendant.

(5) Court Has No Opinion

Let me finish up by repeating something that I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in any way. You decide for yourselves whether or not the Plaintiff has proved his claims against the Defendant.

Thank you for your service as jurors. The Court is now in recess for the purpose of jury deliberations.