

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

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,

**Plaintiff,**

**vs.**

**Civ. No. KG/**

,

**Defendant.**

**COURT'S PRELIMINARY INSTRUCTIONS TO THE JURY**

MEMBERS OF THE JURY:

Now that you have been sworn, I will give you some preliminary instructions to help you understand the dispute between the parties, your duties as jurors, the evidence you will hear and see, and the applicable law to the parties' claims.

These instructions can be divided into three parts: general principals applicable to all civil trials; specific instructions about the issues in this case, what the Plaintiff must prove for his claim, and what the Defendant must prove as to its affirmative defenses; and instructions about your conduct until the case is placed in your hands for a verdict.

Although it is my intent that the preliminary instructions be complete, except with regard to some additional instructions relating to your deliberations, the final instructions that I give you may vary somewhat from these instructions.

If so, those final instructions are to control your deliberations.

Preliminary Jury Instruction No. \_\_\_\_

You are the judges of the facts. It will be your duty to find from the evidence what the facts are. You will then apply the law to the facts. I will instruct you on the applicable law later. You must follow that law whether you agree with it or not.

Nothing that I say or do is intended to indicate what your verdict should be.

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other things received as exhibits, and any facts that the lawyers agree to, or that I instruct you to find.

Certain things are not evidence and must not be considered by you.

1. Statements, arguments, and questions by lawyers are not evidence.
2. Objections to questions are not evidence. Lawyers have an obligation to their clients to object when they believe evidence being offered is improper under the Rules of Evidence. You should not be influenced by the objection or by my ruling on it. If the objection is sustained, ignore the question. If I instruct you that some item of evidence is received for a limited purpose only, you must follow that instruction.
3. Testimony that I have excluded or tell you to disregard is not evidence and must not be considered.
4. Anything that you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in court.

Preliminary Jury Instruction No. \_\_\_\_

This is a civil case. It is a general rule in civil cases that a party seeking a recovery or a party relying on a defense has the burden of proving every essential element of its claim or defense by a preponderance of the evidence.

To prove by a preponderance of the evidence means to establish that something is more likely true than not true. When I say in these instructions that a party has the burden of proof, I mean that you must be persuaded that what is sought to be proved is more probably true than not true. Evenly balanced evidence is not sufficient.

Preliminary Jury Instruction No. \_\_\_\_

[Insert Plaintiff's Statement of Theory for Recovery & Factual Contentions]

Preliminary Jury Instruction No. \_\_\_\_

[Insert Defendant's Statement of Denial, Affirmative Defenses, & Factual Contentions]

Preliminary Jury Instruction No. \_\_\_\_

It is your duty to determine the facts, and in so doing you must consider only the evidence I admit in this case. The term “evidence” includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is 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. What the lawyers say is not binding upon you.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

Preliminary Jury Instruction No. \_\_\_\_

You may consider either direct or circumstantial evidence. “Direct evidence” is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. “Circumstantial evidence” consists of proof of facts or circumstances which give rise to a reasonable inference of the truth of the fact sought to be proved. The law makes no distinction between the weight to be given to either direct or circumstantial evidence.

Preliminary Jury Instruction No. \_\_\_\_

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.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness' testimony to accept or reject. When determining the weight to be given to the testimony of a witness, you may consider his interest, if any, in the outcome of the case; his relationship to the parties; his manner while testifying; any bias or prejudice the witness may have; and whether the testimony of the witness was impeached by prior statements he made or by other evidence.

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



Preliminary Jury Instruction No. \_\_\_\_

Ordinarily, a witness cannot give his or her opinion; instead, a witness can only testify about facts within his or her personal knowledge.

Under some circumstances, a witness who has special knowledge, training, or experience beyond that usually possessed by jurors can present opinion testimony.

You do not have to accept such testimony or find it conclusive as to the particular subject matter.

In deciding what weight to give to such testimony, consider how well qualified the witness was to give the opinion and the basis on which he or she reached the opinion.

In addition, apply the same considerations you are to apply to the testimony of other witnesses in determining how credible they are and how much weight to give to their testimony.

Preliminary Jury Instruction No. \_\_\_\_

During trial it may be necessary for me to talk with the lawyers out of the hearing of the Jury, either by having a bench conference while the Jury is present in the courtroom, or by calling a recess. The purpose of these conferences is to decide how certain evidence is to be treated under the Rules of Evidence and to avoid confusion and error

Preliminary Jury Instruction No. \_\_\_\_

During this trial and until you have rendered a verdict, do not discuss this case with anyone or permit anyone to discuss it with you or in your presence. This rule about not discussing the case includes discussions even with members of your family or friends. This rule also includes electronic communication. You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter, through any blog or website, through any internet chat room, or by way of any other social networking websites, including Facebook, MySpace, LinkedIn and YouTube. If any person attempts to talk to you or communicate with you about this case, either in or out of the courthouse, you should immediately report that attempt to me. The attorneys and parties are not supposed to talk to jurors, even to say “hello.” So, if you happen to see them outside the courtroom they will not speak to you. Please do not be offended by this. They will only be acting in accordance with my instructions.

Until you retire at the end of the case to begin your deliberations, do not talk about this case with each other.

You may not consider anything you may have read or heard about this case outside the courtroom. During trial you must avoid news accounts about this case, whether it is on television, the radio, or the internet, or is in the newspaper. If you happen to see or hear any news about this trial, please let a member of my staff know.

Please do not attempt any tests, research or experiments, and do not visit any location involved in this case. It would be difficult or impossible to duplicate conditions shown by the evidence; therefore, your results would not be reliable. Such conduct would also run contrary to the rule that your verdict must be based solely on the evidence presented to you in court. You

also must not conduct any independent research about this case, the matters in the case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Nevertheless, in your deliberations, you need not ignore your backgrounds, including professional, vocational and educational experience.

Please keep an open mind until the entire case has been completed and submitted to you. Your special responsibility as jurors requires that throughout this trial you exercise your judgment impartially and without regard to any sympathy, bias or prejudice.

Preliminary Jury Instruction No. \_\_\_\_

You are allowed, but not required, to take notes during the trial. Pencils and tablets have been provided for you. Your notes should not take the place of your independent memory of the evidence. When taking notes, please remember the importance of paying close attention to the trial. Listening to and watching witnesses during their testimony will help you to assess their appearance, behavior, memory and whatever else bears on their believability.

At each recess, please take your notes with you to the jury room. At the end of the day, please leave your notes in the jury room. The courtroom deputy will store your notes and return them to you when the trial resumes. The notes are for your own personal use—they are not to be read or given to anyone else before or during deliberations. At the end of the trial the notes will be collected and destroyed.

Even though the court reporter is making a record of these proceedings, a copy of the transcript will not be available for your use during deliberations. The exhibits will be available to you during your deliberations.

Preliminary Jury Instruction No. \_\_\_\_

This concludes my preliminary instructions. The trial will now begin. First, each side may make an opening statement. An opening statement is neither evidence nor argument; it is an outline of what that party intends to prove, offered to help you follow the evidence.

Next, the Plaintiff(s) will present his/her/its/their witnesses and exhibits. Then, the Defendant(s) will present his/her/its/their witnesses and exhibits. Each side may cross-examine witnesses presented by the other side.

After that I will give you final instructions on the law, and the lawyers will make their closing arguments to summarize and interpret the evidence for you.

I remind you that, if my final instructions differ from these instructions, you must follow the final instructions.

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UNITED STATES DISTRICT JUDGE