

HOW TO USE JUDGE MOLZEN'S STOCK INSTRUCTION PACKETS

CIVIL STOCK INSTRUCTIONS

These general instructions were modified in chambers using the 5th Circuit Pattern Criminal Instructions as a template. Judge Molzen has some initial instructions to the jury prior to beginning the opening statement which are not included here. "Stock" Instructions # 1 - 7, and 8 and 8A (if appropriate) are given just before the closing arguments begin. The final instruction # 9 is given immediately after closing argument and just before the jury retires to deliberate. If a special verdict is appropriate, the # 9 instruction will be modified to reflect that.

You should not submit proposed instructions on the matters already covered by these stock instructions unless you have some specific objection. Rather, please focus your efforts in developing the more specific proposed instructions covering the elements of the claims, defenses and damages.

INSTRUCTION NO. 1

Members of the Jury:

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to decide what evidence is 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.

First, I will give you some general instructions which apply in every case, for example, instructions about burden of proof and how to judge the believability of witnesses. Then I will give you some specific rules of law about this particular case, and finally I will explain to you the procedures you should follow in your deliberations.

INSTRUCTION NO. 2

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. It is your duty to apply the law as I explain it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took before being accepted by the parties as jurors, and they have the right to expect nothing less.

INSTRUCTION NO. 3

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

To prove by the greater weight 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

INSTRUCTION NO. 4

As I told you earlier, it is your duty to determine the facts. In doing so, you must consider only the evidence presented during the trial, including the sworn testimony of the witnesses and the exhibits. Remember that any statements, objections, or arguments made by the lawyers are not evidence. 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.

Also, do not assume from anything I may have done or said during the trial that I have any opinion concerning any of the issues in the case. Except for the instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own findings as to the facts.

INSTRUCTION NO. 5

While you should consider only the evidence, 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 considering the evidence, you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is indirect evidence that is proof of circumstances that tend to prove or disprove the existence or nonexistence of certain other facts. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

INSTRUCTION NO. 6

I remind you that it is your job to decide the facts in this case. In doing so, 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 the witness's testimony. An important part of your job will be making judgments about the testimony of the witnesses who testified in this case. You should decide whether you believe what each person had to say, and how important that testimony was. In making that decision I suggest that you ask yourself a few questions: Did the person impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness have any relationship with either a plaintiff or a defendant? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses? These are a few of the considerations that will help you determine the accuracy of what each witness said.

In making up your mind and reaching a verdict, do not make any decisions simply because there were more witnesses on one side than on the other. Do not reach a conclusion on a particular point just because there were more witnesses testifying for one side on that point. Your job is to think about the testimony of each witness you have heard and decide how much you believe of what each witness had to say.

INSTRUCTION NO. 7

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness said or did something, or failed to say or do something, which is inconsistent with the testimony the witness gave at this trial.

Earlier statements of a witness were not admitted in evidence to prove that the contents of those statements are true. You may consider the earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

INSTRUCTION NO. 8

Although there is more than one plaintiff in this action, it does not follow from that fact alone that if one is entitled to recover, another is entitled to recover. The rights of the various plaintiffs in this lawsuit are separate and distinct, and you should decide the issues as if each plaintiff had brought a separate lawsuit.

INSTRUCTION NO. 8A

Although there is more than one Defendant in this action, it does not follow that if one is liable, all are liable. Each Defendant is entitled to a fair consideration of that Defendant's own defense, and is not to be prejudiced by the fact, if it should become a fact, that you find against another. Unless otherwise stated, all instructions given apply to the case against each Defendant.

INSTRUCTION NO. 9

To reach a verdict, all of you must agree. Your verdict must be unanimous. Your deliberations will be secret. You will never have to explain your verdict to anyone.

It is your duty to consult with one another and to 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. 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 as to the weight or effect of the evidence 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. Your sole interest is to seek the truth from the evidence in the case, to decide the facts in this case.

When you go to the jury room, the first thing that you should do is select one of your number as your foreperson, who will help guide your deliberations and will speak for you here in the courtroom.

A form of verdict has been prepared for your convenience.

The foreperson will indicate the unanimous answer of the jury in the spaces provided. At the conclusion of your deliberations, the foreperson should date and sign the verdict.

If you need to communicate with me during your deliberations, the foreperson should write the message, sign it and give it to the marshal. I will either reply in writing or bring you back into the court to answer your message. Bear in mind that you are never to reveal to any person, not even the Court, how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict. Retain the verdict form until I ask you for it here in the courtroom.