

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

,

**Plaintiff,**

**v.**

**Case No.**

,

**Defendant.**

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**JURY INSTRUCTIONS**

Rev. March 2011

INSTRUCTION NO. \_\_\_\_

The time has now come for me to explain to you the law that will govern your jury deliberations.

You are duty bound to follow the law as I explain it to you in the instructions that I am about to give you. You as jurors are the sole judges of the facts. This means that you must take the law as I explain it to you and apply the law to the facts revealed by the evidence.

Do not single out any one instruction alone as stating the law. Rather, consider my instructions in their entirety.

Also, do not concern yourselves with the wisdom of the law. Despite any opinion you may have about what the law should be, you would violate your sworn duty if you were to base your verdict upon any view of the law other than that given to you in these instructions.

INSTRUCTION NO. \_\_\_\_

You may consider as evidence everything that was admitted during trial such as witness testimony (in person or by deposition), an article or document marked as an exhibit, or any other matter admitted into evidence such as an admission, agreement, or stipulation. You must entirely disregard any evidence with respect to which I sustained an objection or which I ordered stricken.

You may consider only the evidence offered in this courtroom, and these instructions I am giving you. You should not rely on any other facts or authority. Specifically, you should not do any computer research on your own about any matters relating to this case, you should not look up words in a dictionary for definitions different or beyond what I give you here, and you should not consult any other similar sources.

You are to consider only the evidence admitted in this case, but you are not limited to considering only the bald statements of witnesses. In other words, you are not limited solely to what you see and hear. You are permitted to draw reasonable inferences based on your experience if reason and common sense lead you to draw particular conclusions from the evidence.

Counsel's statements and arguments are not evidence unless they are admissions or stipulations. When the attorneys for both parties agree that a particular fact exists, that is referred to as a "stipulation" and the jury must accept that stipulation as true.

INSTRUCTION NO. \_\_\_\_

At times during trial, I ruled on the attorneys' objections to admitting certain items into evidence. Questions relating to the admissibility of evidence are solely questions of law for me. You must not concern yourselves with the reasons for my rulings and do not draw any inferences from my rulings. Consider only the evidence admitted.

Some evidence is admitted for a limited purpose only. When I have instructed you that particular evidence is admitted for a limited purpose, you must consider that evidence only for that purpose and for no other.

Some of the exhibits may contain redactions. The portions of those exhibits have been redacted either because I have excluded the redacted portions from the evidence or because the parties have agreed that the redacted portions should not be admitted. You should disregard any redactions just as you would disregard any other evidence that I have excluded from the record.

INSTRUCTION NO. \_\_\_\_

During the trial, certain testimony has been presented by way of deposition. The deposition consisted 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 is not present to testify from the witness stand may be presented in writing under oath or on a videotape. Such testimony is entitled to the same consideration and is to be judged as to credibility, and weighed, and otherwise considered by you, insofar as possible, in the same way as if the witness had been present and had testified from the witness stand.

INSTRUCTION NO. \_\_\_\_

Although you must consider all of the evidence, you are not required to 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 his or her testimony. In weighing the testimony of a witness you should consider the witness' relationship to the party; any interest the witness may have in the outcome of the case; the witness's manner while testifying; the opportunity to observe or acquire knowledge concerning the facts about which the witness testified; the witness's candor, fairness and intelligence; and the extent to which the witness has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

When weighing conflicting testimony, you should consider whether the discrepancy has to do with a material fact or with an unimportant detail, and should keep in mind that innocent misrecollection – like failure to recall – is not uncommon.

In addition, while you must 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.

INSTRUCTION NO. \_\_\_\_

You are to determine the weight and credit to give each witness' testimony. You have a right to use common knowledge and experience in evaluating witnesses' testimony.

A witness may be discredited or "impeached" by contradictory evidence, or by evidence that at some other time the witness has made an oral or written statement or testified in a deposition in a manner which is inconsistent with the witness's present testimony, if on a matter which is material to the issues.

You may consider such evidence only insofar as it may impact the witness' credibility – that is, only in deciding the weight and credit to be given to that witness' testimony.

If you believe that any witness has been so impeached, then it is your exclusive function to give the testimony of that witness such credibility or weight, if any, you think it deserves.

INSTRUCTION NO. \_\_\_\_

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

It is for you to decide whether a fact has been proved by circumstantial evidence. In making that decision, you must consider all the evidence in the light of reason, common sense, and experience.

INSTRUCTION NO. \_\_\_\_

Certain testimony has been given in this case by experts; that is, by persons who are specially qualified by experience or training and possess knowledge on matters not common to mankind in general. The law permits such persons to give their opinions regarding such matters. The testimony of experts is to be considered like any other testimony and is to be tried by the same tests, and should receive the same weight and credit as you deem it entitled to, when viewed in connection with all the other facts and circumstances, and its weight and value are questions for you.

INSTRUCTION NO. \_\_\_\_

This instruction sets forth plaintiff [party name] claim against the defendant [defendant's name] as well as the [defendant's] denial of [plaintiff's] claim and certain defenses asserted by the [defendant]. This claim, the [defendant's] denial of the claim, and the [defendant's] asserted defenses, described below, are not evidence and you should not consider them as evidence. They simply explain the nature of the parties' dispute.

[Plaintiff] claims that . . . . She claims that she suffered damages as a result of . . . . She seeks damages for . . . . [Plaintiff] must prove her claim by a preponderance of the evidence.

The [defendant] denies plaintiff's allegations. Specifically, the [defendant] claims that . . .

INSTRUCTION NO. \_\_\_\_

Both [plaintiff] and [defendant] have the burden-of-proof on their respective claims. Burden-of-proof means burden of persuasion. In this case, depending on the particular claim, one or another level of burden-of-proof will apply.

A party who must prove something by a preponderance of the evidence must persuade you that its claims are more probably true than not true. To prove that something is more probably true than not true does not necessarily mean by the greater number of witnesses, or the length of the presentation of testimony, but rather by the greater weight of the evidence, taken together – that is, that evidence upon any question or issue which convinces you most strongly of its truthfulness. If the evidence on an issue is equally balanced, then the party having the burden to establish that issue must fail.

A party who must prove something by clear and convincing evidence must persuade you of the truth of its claim by evidence that is “clear” in the sense that it is certain, plain to understand, and unambiguous, and “convincing” in the sense that it is so reasonable and persuasive as to cause you to believe it. To prove something by clear and convincing evidence is a higher standard than by a preponderance of the evidence, however, it does not require proof beyond a reasonable doubt.

It is the law of this state that to prove the existence of a fiduciary relationship it is necessary for the party claiming its existence to do so by evidence that is clear and convincing.

It is the law of this state that to prove fraud it is necessary for the party claiming fraud to do so by evidence that is clear and convincing.

In determining whether a party has met either burden-of-proof you will consider all the evidence, regardless of which party produced the evidence.

INSTRUCTION NO. \_\_\_\_

[corporate party] can act only through its officers and employees. Therefore, whenever mention is made of the [corporate party] doing or not doing something, then, of course, it means officers or employees of the [corporate party] acting within the scope of their employment.

The [corporate party] is entitled to the same fair and impartial consideration as an individual under like circumstances.

INSTRUCTION NO. \_\_\_\_

[specific case instructions]

INSTRUCTION NO. \_\_\_\_

Negligence is the lack of ordinary care. It is the failure to do something that an ordinary person would do, or the act of a person in doing something that an ordinary person would not do, measured by all of the circumstances then existing.

INSTRUCTION NO. \_\_\_\_

Proof of causation is necessary to a finding of fault. A defendant is "at fault" when [he] [she] [it] is negligent and that negligence causes or contributes to cause the event which brought about the injury for which the claim is made. A person may be negligent but unless that negligence causes or contributes to cause the injury, that person cannot be "at fault".

When I say "contributed to cause the injury", I mean that there may be more than one cause of an injury; that is, there may be concurrent causes which combine to produce an injury. Concurrent causes do not always occur simultaneously. One cause may be continuous in operation and join with another cause occurring at a later time.

INSTRUCTION NO. \_\_\_\_

If you find the defendant was negligent and “at fault” for [the plaintiff’s injuries] you must then determine her damages. You may award her such sum as you find by a preponderance of the evidence will fairly and justly compensate her for any damages that you find she has sustained as a result of the [claims].

Any damages award you make must have a reasonable basis in the evidence. They need not be mathematically exact, but there must be enough evidence for you to make a reasonable estimate of damages without speculation or guesswork. The burden is upon the plaintiff to prove the existence and amount of damages and that these damages were caused by the acts or omissions of the defendant. You are not permitted to award speculative damages.

You should not consider the fact that I have instructed you about the proper measure of damages as an indication of my views regarding which party is entitled to your verdict in this case. That is entirely for you, the jury, to decide. I am giving you instructions about damages solely to provide you with guidance if you should find in favor of [plaintiff].

INSTRUCTION NO. \_\_\_\_

In this case, Plaintiff claims that Defendant acted in a willful, wanton and malicious manner toward Plaintiff. If you find from a preponderance of the evidence that either Plaintiff should be awarded actual damages, then you may, but are not required to, award punitive damages to the plaintiff to whom you awarded actual damages. Punitive damages may be allowed in the jury's discretion to punish a defendant for extraordinary misconduct and to warn others not to engage in similar conduct.

The burden is on the plaintiff to prove by clear and convincing evidence that the defendant acted in a willful, wanton and malicious manner in [claims]. Clear and convincing evidence is defined in Instruction No. \_\_\_\_\_.

An act is "willful" if it is done with a designed purpose or intent on the part of a person to do wrong or to cause an injury to another.

An act is "wanton" if it is performed with a realization of the imminence of danger and a reckless disregard or complete indifference to the probable consequences of the act.

"Malice" is a state of mind characterized by an intent to do a harmful act without a reasonable justification or excuse.

If you decide to award punitive damages in this case, then in assessing the amount of such damages, you may consider the following:

- (1) the likelihood at the time of the alleged misconduct that serious harm would arise from the defendant's misconduct;
- (2) the degree of the defendant's awareness of that likelihood;

- (3) the profitability of the defendant's misconduct;
- (4) the duration of the misconduct and any intentional concealment of it;
- (5) the attitude and conduct of the defendant upon discovery of the misconduct;
- and
- (6) the financial condition of the defendant.

Any award of punitive damages must be fixed with calm discretion and sound reason, and must never be awarded, or fixed in amount, because of any sympathy, or bias, or prejudice with respect to any party to the case.

You should not consider the fact that I have instructed you about the proper measure of punitive damages as an indication of my views regarding your verdict in this case. That is entirely for you, the jury, to decide. I am giving you instructions about damages solely to provide you with guidance if you should find punitive damages appropriate.

INSTRUCTION NO. \_\_\_\_

The Court has permitted you to take notes during this trial, if you wanted. If you did take notes, remember that any notes that you have taken are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. Your notes are not evidence.

If you did not take notes, you should not be influenced by the notes of other jurors but should rely on your independent recollection of the evidence. Even if you did take notes, you should not be unduly influenced by the notes of other jurors if they differ from yours. There can be a tendency to attach too much importance to what someone has written down, but notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony. Remember, something that may not have seemed important at the time, and thus was not written down in your notes, may take on greater importance later in the trial in light of all the evidence presented, the Court's instructions on the law, and the final arguments.

Therefore, don't attach undue importance to your notes, or be unduly influenced by another juror's notes. Your notes are not evidence, and are by no means a complete summary of the trial. They are only an aid to your memory, and it is your collective memory that is your greatest asset in deciding this case.

INSTRUCTION NO. \_\_\_\_

In deciding the facts of this case, you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the Court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. Corporations are entitled to the same fair trial at your hands as a private individual. All persons [including corporations] stand equal before the law and are to be dealt with as equals in a court of justice.

INSTRUCTION NO. \_\_\_\_

I have not intended in anything that I have said or done – not in these instructions, in any ruling, or in any action or remark I may have made during trial – to suggest how I would resolve any of the issues in this case.

You will now hear closing arguments from counsel. Because the Plaintiff has the burden of proof, he is entitled to split his argument time to go first and last. Following closing arguments, I will have a few remaining instructions to give you concerning your deliberations.

INSTRUCTION NO. \_\_\_\_

Your verdict must represent the considered judgment of each juror. In order to return a verdict, each juror must agree upon the verdict and your verdict must be unanimous.

As jurors, you have a duty to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after considering the evidence impartially with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if you become convinced that it is wrong. But do not surrender your honest conviction 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.

You are not partisans. You are judges – judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

INSTRUCTION NO. \_\_\_\_

A suggestion by the Court – technically not an instruction upon the law – may assist your deliberations. The attitude of jurors at the outset of and during their deliberations is important. It is seldom productive for a juror, immediately upon entering the jury room, to make an emphatic expression of his or her opinion upon the case or to announce a determination to stand for a certain verdict. The reason is obvious: we are all human and it is difficult to recede from a position once definitely stated, even though later convinced it is unsound.

Jurors are selected for the purpose of doing justice. This presupposes and requires deliberation – counseling together in an effort to agree. Have in mind at all times, therefore, that you are a deliberative body, selected to function as judges of the facts in a controversy involving the substantial rights of the parties. You will make a definite contribution to efficient administration of justice when and if you arrive at a just and proper verdict under the evidence which has been adduced. No one can ask more and you will not be satisfied to do less.

INSTRUCTION NO. \_\_\_\_

When you retire to the jury room, you should first select one of you as the foreperson to preside over your deliberations, speak for the jury when in court, and sign the verdict.

The next thing you should do is read the Court's instructions. One of the purposes of the instructions is to guide your deliberations. Not only will your deliberations be more productive if you understand the legal principles upon which your verdict is based, but for your verdict to be valid, you must follow the Court's instructions throughout your deliberations. Remember, you are judges of the facts, but you are bound by your oath to follow the law as stated in the instructions. Your verdict must be founded entirely upon the evidence admitted and the law that I have given to you in these instructions.

Your verdict must be unanimous. A form of verdict has been prepared for your convenience. Once you reach a unanimous verdict, the foreperson should complete the verdict form pursuant to its instructions, date and sign it, and then notify my clerk that you have reached a verdict. The foreperson will carry the completed verdict into the courtroom and, after we have returned to the courtroom, hand it to the clerk when instructed to do so.

INSTRUCTION NO. \_\_\_\_

If it becomes necessary during your deliberations to communicate with me, please reduce your message or question to writing and give the note to my clerk, who, in turn, will pass the note along to me. The note must be signed by your foreperson or by one or more of you. I will then respond as promptly as possible, either in writing, or by having you return to the courtroom so that I can address you orally. You should never, in any written note that you might send, or in any comments, state or specify your numerical division at any time, until you have reached a unanimous verdict.

None of you should ever attempt to communicate with me about the merits of the case in any way other than by a signed writing. I will not communicate with any of you on any subject involving the merits of the case other than in writing, or orally here in open court. During your deliberations, you must also not communicate with, or provide any information to, anyone about this case by any means. Specifically, you should not discuss this case or your deliberations with anyone, nor should you use any electronic device or media – such as mobile phones, texting, instant messaging, blog, chat room, twitter, or any other means – to communicate to anyone any information about this case, until I have accepted your verdict.

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Date

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Eric F. Melgren  
United States District Judge