

PRELIMINARY JURY INSTRUCTIONS

Bruce Guyton
U.S. Magistrate Judge
Eastern District of Tennessee

MEMBERS OF THE JURY:

Welcome to jury service in Federal Court. Now that you have been sworn as the jury to try this case, I want to give you some preliminary instructions on your proper role and conduct as members of the jury. As the jury, you have an important responsibility: to decide what the facts are that are in dispute in the case.

As the Judge, I will decide all questions of law and procedure. From time to time during the trial, and at the end of the trial, I will instruct you on the rules of law that you must follow in making your decision.

You, the jury, will decide what the facts are from the evidence that will be presented in court. You, and you alone, are the judges of the facts. You will hear the evidence, decide what the facts are, and then apply the law I give you to those facts. You must follow the law which I give you whether you agree with it or not. That is how you will reach your verdict. But do not take anything I say or do during the trial as indicating what your verdict should be. For example, do not be influenced by the Judge taking notes at times, or asking a lawyer to repeat a question, or a witness to repeat an answer. The evidence will consist of the testimony of the witnesses, all documents and other tangible things received into evidence as exhibits, and any facts that the lawyers agree on or that I may instruct you to accept as true.

In a moment, the lawyers for each of the parties will make what is called an opening statement. This will be a summary of the evidence each party plans to present in court, and is designed to give you a general idea of what the case is all about. What the lawyers say in their opening statements is not evidence.

After the lawyers' opening statements, the parties will present their evidence. The person who brings a lawsuit is called the plaintiff. A plaintiff always seeks some relief against the other party called the defendant. A plaintiff alleges that the defendant in some manner was at fault and that, as a result of this, the plaintiff suffered a loss. The plaintiff goes first, calling his witnesses and putting his exhibits into evidence. Then, the defendant puts on its witnesses and exhibits. After that, the plaintiff may present rebuttal proof. Then the lawyers will again address you for the closing arguments. After that, you will be sent to the jury room to decide on your verdict. After all the evidence is presented, I will read to you the final jury instructions that you will follow in deciding this case. You will be given a written copy of those instructions to take with you to the jury room for your review during your deliberations.

You will decide from all the evidence what the true facts are. As you hear the evidence, keep an open mind until you have heard all the evidence, my instructions on the law, and the attorneys' closing arguments.

Certain things are not evidence and must not be considered by you. I will list them for you now:

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 make an objection when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by the objection or by the Court's ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.
3. Testimony that the Court has excluded or told you to disregard is not evidence and must not be considered.
4. Anything 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 the Courtroom.

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 proof of facts from which you may infer or conclude that other facts exist. I will give you further instructions on these as well as other matters at the end of the case, but have in mind that you may consider both kinds of evidence.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. I will give you some guidelines for determining the credibility of witnesses at the end of the case.

BURDEN OF PROOF

In a civil action such as this one, in order to recover money damages, the plaintiff must prove his claims by a preponderance of the evidence. That means the plaintiff has to produce evidence which, considered in the light of all the facts, leads you to believe that what the plaintiff claims is more likely true than not. To put it differently, if you were to put the plaintiff's and the defendant's evidence on opposite sides of the scales, the plaintiff's evidence would have to make the scales tip somewhat on the plaintiff's side. If the plaintiff fails to meet this burden, the verdict must be for the defendant.

Those of you who have sat on criminal cases will have heard of proof beyond a reasonable doubt. That requirement does not apply to a civil case and you should therefore put it out of your mind.

INFERENCE DEFINED

During the course of the trial you may hear the attorneys use the term “inference,” and in their arguments they may have asked you to infer, on the basis of your reason, experience, and common sense, from one or more established facts, the existence of some other fact(s).

Inferences are deductions or conclusions which reason and common sense lead you to draw from the facts which have been established by the evidence in the case. An inference is not a suspicion or guess. It is a reasoned, logical conclusion that a disputed fact exists on the basis of another fact which has already been shown to exist. An inference is made through a process of reasoning by which a fact or proposition sought to be established is deduced as a logical consequence from other facts already proved or admitted.

There are times when different inferences may be drawn from the same fact(s). The plaintiff may ask you to draw one set of inferences, while the defendant may ask you to draw another. It is for you, and you alone, to decide what inferences, if any, you will draw.

The law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial. However, your verdict cannot be based upon speculation, surmise, or conjecture. It must be based on a preponderance of all the evidence in the case.

**JURY IS EXCLUSIVE JUDGE OF THE WEIGHT GIVEN AND THE
CREDIBILITY OF THE WITNESSES**

You, the jury, are the ones who decide how important each piece of evidence is and whether or not the witnesses are entitled to be believed. In deciding how much importance to attach to what a witness has said, you should consider the following facts: the demeanor of the witness on the witness stand, meaning the way he behaved; his intelligence or lack of intelligence; any bias or prejudice that he may have shown; his relationship to any of the parties in the case; whether or not he has anything to gain or lose by a particular outcome of the case; how he learned the facts about which he testified; the reasonableness or unreasonableness of the story he tells; and whether his testimony is consistent or inconsistent with statements he may have made in the past. You should attach more importance to the testimony of that witness or those witnesses who, in your opinion, have been more truthful in telling the facts of the case.

SUMMARY OF THE APPLICABLE LAW

Members of the jury, I will give you detailed instructions at the end of this trial, and those instructions will govern your deliberations. However, in order to help you to follow that evidence you are about to hear, I want to give you at this time a brief summary of the elements which the plaintiffs must prove in order to make out their case.

A plaintiff is entitled to recover compensation for an injury that was legally caused by the negligent conduct of a defendant. In this case, the plaintiff has the burden of proving that the defendant was “at fault.” In this case, this means the plaintiff has the burden of proving:

1. That the defendant was negligent; and
2. That the negligence was a legal cause of injury to the plaintiff.

Negligence is the failure to use reasonable care. It is either doing something that a reasonably careful person would not do, or the failure to do something that a reasonably careful person would do, under circumstances similar to those shown by the evidence. A person may assume that every other person will use reasonable care unless the circumstances indicate the contrary to a reasonably careful person.

The second part of fault is legal cause. A legal cause of any injury is a cause which, in natural and continuous sequence, produces an injury, and without which the injury would not have occurred. A single injury can be caused by the negligent acts or omissions of one or more persons.

If you find that a party was negligent and that the negligence was a legal cause of the injury or damages for which a claim was made, you have found that party to be at fault. The

plaintiff has the burden to prove the defendant's fault. If the plaintiff fails to do so, you should find no fault on the part of the defendant.

A person who violates a statute or ordinance is negligent. However, a person violating a statute or ordinance is not at fault unless you also find that the violation was a legal cause of the injury or damage for which a claim has been made.

The plaintiff alleges that the defendant Fox of Oak Ridge's employee violated the following statute as set forth in section 55-8-124(a) of the Tennessee Code Annotated: "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway."

Even though the Court Reporter is making stenographic notes of everything being said in the courtroom, a typewritten copy of those notes will not be available to you

during your deliberations. Therefore, pay close attention to the testimony of the witnesses. Any exhibits admitted into evidence will go with you to the jury room when you are sent to deliberate, so you will have a chance to look at them at that time as much as you want, if you wish to do so.

Now, I want to talk with you about the rules for proper behavior as a member of the jury. I won't repeat all of these rules each time we call a recess, but I can't emphasize enough how important how important it is for you to obey these rules, so we can be sure that the parties to this case get a fair trial.

First, do not talk to your fellow jurors about this case until you are sent to the jury room to decide on your verdict. Just as important, do not talk to anyone who has anything to do with this case – the lawyers, the parties, the witnesses, or anyone associated with them. They understand that you should not have any conversation with them while the trial is going on, even to say “Good morning,” so as to avoid even the appearance of any improper contact. Our system of justice requires that you not only be fair and impartial, but that you also give every appearance of being totally fair and impartial.

Second, do not talk with anyone else about this case until the trial is completely over. “Anyone else” includes members of your family and your friends. You can tell them

that you are serving as a juror in a case, but don't tell them anything else about it until after it is finished.

Third, do not let anyone talk to you about the case or anyone who has anything to do with it. If someone should try to talk to you, you should immediately report it to one of our Court Security Officers (CSO's) [introduce them], who will in turn tell me. I assure you that I will take swift and harsh action against anyone who attempts to do anything improper.

Fourth, if you start to hear anything on the radio or TV about this case, or see an article in the newspaper that might be about this case, do not let yourself hear or see that.

Finally, do not try to gather any information or do some other type of investigation on your own that might relate to the facts of this case. You must decide this case based on the evidence you see and hear in this courtroom, and any effort to obtain independent information would not be proper.

During the trial, there will be times when I need to confer with the lawyers when you are not present or should not hear what we say. These conferences are a necessary part of any trial. I will do my best to keep to a minimum and as short as possible. Sometimes I will do it by a bench conference, where the lawyers approach the bench and we

whisper together, while the Court Reporter takes down everything we say. When that happens, please feel free to stand up and stretch while we are conferring. If it looks like I will need to spend more than a few moments with the lawyers, I will excuse you from the courtroom so you can relax while we continue to confer.

During your service as a juror in this case, the CSO's are your "guardian angels," who want to do everything they can, on behalf of the Court, to make your time here as comfortable and pleasant as possible. They are the persons you should go to if you have any questions, special needs, or problems. As I advised you during voir dire, we expect this case to last approximately **two (2)** days, but if during the trial it looks like it will run shorter or longer, I will certainly let you know as soon as I find out myself. I expect that we will have a lunch break each day of approximately one (1) hour and take a recess of about fifteen (15) minutes during the middle of each morning and afternoon. I expect that we will start each morning no later than 9:00 a.m. and finish by no later than 5:00 p.m. Sometimes, however, it is necessary to change this schedule somewhat for various reasons, and I will certainly let you know as soon as possible if it looks like we will need to change in the usual schedule, particularly if we might go past 5:00 p.m. on a particular day. If doing that might create any sort of problem for you, please let the CSO know about your situation, and we will do everything we can to accommodate your needs as much as possible.

[TO THE ATTORNEYS]: Is the Rule requested? [If so, admonish the witnesses as follows]:

The Rule has been requested in this case and so witnesses who are not parties or representatives of parties will be sequestered. That is, you will wait in the witness waiting room until you are called as a witness in this trial. You should stay out of the courtroom until you have testified and are excused. You must not discuss this case with other witnesses until it is concluded. You must make no attempt to find out what another witness may have said on the witness stand during the trial of this case.

The witnesses are excused.

It is now time for the opening statements by the attorneys, and I call upon counsel for the plaintiff to make the first opening statement.