

not possibilities. It may not be based upon speculation or guess work.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case. It is not my function to determine the facts, but rather yours.

BURDEN OF PROOF

In this civil action, the plaintiff has to prove the essential elements of his claims by a preponderance of the evidence and, if the plaintiff fails to establish any essential element by a preponderance of the evidence, your verdict as to that claim must be for the defendants.

A “preponderance of the evidence” as the term is used in these instructions does not necessarily mean the greater number of witnesses testifying to a fact or set of facts, but means that evidence which to your minds is most convincing and seems more likely true than not true.

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

SEPARATE CLAIMS

The plaintiff in this case asserts claims against the defendants. Each of these claims and the evidence applicable to them is to be considered separately.

CONSIDER EACH DEFENDANT SEPARATELY

The plaintiff has sued defendants in this case and claim that each is liable to them in damages. You must consider separately the liability of each defendant to the plaintiff under the evidence and the Court's instructions as to the applicable law. The fact that one defendant may be found liable to the plaintiff should not control your verdict with respect to another defendant, unless you find that the plaintiff has also proven his claim or claims against such other defendant.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are, generally speaking, two types of evidence from which a jury may properly find the facts in a case - direct evidence and circumstantial evidence. “Direct evidence” is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. “Indirect or circumstantial” evidence is the proof of a chain of facts and circumstances indicating the existence or nonexistence of some other fact.

As a general rule, the law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

WITNESS - IMPEACHMENT

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has made statements that are inconsistent with the witness' present testimony. If you believe that any witness has been impeached and thus discredited, you may give the testimony of that witness such weight, if any, as you think it deserves.

If any witness is shown knowingly to have testified falsely concerning any material matter, you have the right to distrust such witness' other testimony, and you may reject all the testimony of that witness, or give it such weight as you think it deserves.

OPINION EVIDENCE - EXPERT WITNESS

Witnesses who, by education and experience, have become expert in some area, science, profession, or calling, may state their opinions as to matters in which they profess to be expert, and may also state their reasons for their opinions.

You should consider each expert opinion received in evidence in this case, and give it such weight as you think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

EVIDENCE

The evidence in the case consists of the sworn testimony of the witnesses, all exhibits which have been received in evidence, and all facts which have been admitted or stipulated. The arguments and statements of the attorneys are not evidence.

It is an attorney's duty to object when the other side offers testimony or other evidence that the attorney believes is not admissible. When I have sustained an objection to a question, you are to disregard the question, and may draw no inference from the wording of it or speculate as to what the witness would have said if permitted to answer.

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, I am not, unless expressly stated, indicating any opinion as to the weight or effect of such evidence. As stated before, you are the sole judges of the facts and that includes the credibility of all witnesses and the weight and effect of all evidence.

**EVALUATION OF EVIDENCE AND
CREDIBILITY AND NUMBER OF WITNESSES**

In deciding the facts, you may have to decide which testimony to believe and which not to believe. 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 considering the testimony of any witness, you may take into account many factors, including the witness' relationship to the parties; the witness' interest, if any, in the outcome of the case; the witness' manner of testifying; the witness' opportunity to observe or acquire knowledge concerning the facts about which he or she has testified; any bias or prejudice the witness may have; the witness' candor, fairness, and intelligence; and the extent to which the witness' testimony 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.

The weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or the nonexistence 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. The test is not which side brings the greater number of witnesses or presents the greater quantity of evidence, but which witnesses and which evidence appeal to your minds as being most accurate and otherwise trustworthy.

VIDEOTAPE DEPOSITION AND DEPOSITION EVIDENCE

During the trial, certain testimony has been presented by way of video or written depositions. You are instructed that you are not to discount this testimony for the sole reason that it comes to you in the form of a deposition. It is entitled to the same consideration and the same judgment on your part with reference to its weight and credibility as is the testimony of witnesses who have taken the stand.

EFFECT OF INSTRUCTIONS AS TO DAMAGES

The fact that I have instructed you as to the proper measure of damages should not be considered by you as intimating any view of mine as to which party in this litigation is entitled to your verdict. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the plaintiff in this case.

CLOSING ARGUMENTS

You will now hear the arguments of counsel. You are reminded that the attorneys' statements and arguments are not evidence. What they have said in their opening statements and during the trial, and what they will say in their closing arguments is intended to help you interpret the evidence, but it is not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

CLOSING

In a few moments, you will go with the bailiff to the jury room to begin your deliberations. If any of you have cell-phones or similar devices with you, you are instructed to be sure they are turned off and then to turn them over to the bailiff as you enter the jury deliberation room. They will be held by the bailiff for you and returned to you after your deliberations are completed and during any lunch break or similar period when you are not deliberating. The purpose of this requirement is to avoid any interruption or distraction during your deliberations and to avoid any question of outside contact with the jury during your deliberations.

You will note from the oath about to be taken by the bailiff, that during the course of your deliberations, the bailiff, as well as other persons, is forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

When you retire you should elect one juror as your foreperson. That person will preside over the deliberations and speak for you with the Court. You will then discuss the case with your fellow jurors to reach agreement if you can do so.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors. You must not use any method of chance in arriving at your verdict.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

You should not let sympathy, sentiment or prejudice enter into your deliberations, but you should discharge your duties as jurors in an impartial and conscientious manner under your oaths and return such verdict as the evidence warrants under these instructions

A form of verdict will be sent to the jury room with you, along with these written instructions of the Court. I suggest you study the verdict form early in your deliberations so you know what you must decide. All of you must agree on a verdict. When you have reached a decision, the foreperson will fill in, date and sign the verdict form. Notify the bailiff by a written note to the Court when you have agreed on a verdict, so that you may return it into open Court.

If it becomes necessary during your deliberation to communicate with me, you may send a note through the bailiff signed by your foreperson. In the message do not tell me how you stand on your verdict. No member of the jury should ever attempt to communicate with me except by a signed writing.

The verdict of the jury in this case must be unanimous, which means that each juror must agree on it. It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if that can be done without disregard of individual judgment.

Each juror must decide the case for himself or herself, but only after an impartial consideration of the evidence in the case with fellow jurors. In the course of deliberations, a juror should not hesitate to reexamine his or her own views and change an opinion, if convinced it is erroneous, but no juror should surrender an honest conviction as to the weight or effect of the evidence solely because of the opinion of fellow jurors or for the mere

purpose of returning a verdict.

Signed this _____ day of _____, 20__.

JOE HEATON
UNITED STATES DISTRICT JUDGE