

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

LESLIE E. KOBAYASHI
United States District Judge

GENERAL FEDERAL JURY
INSTRUCTIONS IN CIVIL CASES

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COURT'S INSTRUCTION NO. 1
DUTY OF JUDGE

Members of the Jury:

You have now heard all of the evidence in the case and will soon hear the final arguments of the lawyers for the parties.

It becomes my duty, therefore, to instruct you on the rules of law that you must follow and apply in arriving at your decision in the case.

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It has been my duty to preside over the trial and to determine what testimony and evidence is relevant under the law for your consideration. It is now my duty to instruct you on the law applicable to the case.

COURT'S INSTRUCTION NO. 2A
DUTY TO FOLLOW INSTRUCTIONS -- Private Individuals As
Parties

You, as jurors, are the judges of the facts.
But in determining what actually happened in this case
-- that is, in reaching your decision as to the facts
-- it is your sworn duty to follow the law I am now
defining for you.

You must follow all of my instructions as a
whole. 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 state to you. That
is, 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 give it to you,
regardless of the consequences.

In deciding the facts of this case you must not
be swayed by sympathy, bias or prejudice as to any
party. 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. All persons stand equal before the law and
are to be dealt with as equals in a court of justice.

COURT'S INSTRUCTION NO. 2B
DUTY TO FOLLOW INSTRUCTIONS -- Corporation As Party

You, as jurors, are the judges of the facts. But in determining what actually happened in this case -- that is, in reaching your decision as to the facts -- it is your sworn duty to follow the law I am now defining for you.

You must follow all of my instructions as a whole. 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 state to you. That is, 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 give it to you, regardless of the consequences.

In deciding the facts of this case you must not be swayed by sympathy, bias or prejudice as to any party. 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. All persons stand equal before the law and are to be dealt with as equals in a court of justice.

A corporation is entitled to the same fair trial at your hands as is a private individual.

COURT'S INSTRUCTION NO. 3
EVIDENCE -- EXCLUDING ARGUMENT OF COUNSEL

As stated earlier, it is your duty to determine the facts, and in doing so you must consider only the evidence I have admitted in the 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 doing so, 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.

COURT'S INSTRUCTION NO. 4
EVIDENCE -- OBJECTIONS

Rules of evidence control what can be received into evidence. During the course of trial, when a lawyer asked a question or offered an exhibit into evidence and a lawyer on the other side thought that it was not permitted by the rules of evidence, that lawyer may have objected. If I overruled the objection, the question was answered or the exhibit received. If I sustained the objection, the question was not answered and the exhibit was not received.

Whenever I sustained an objection to a question, you must not speculate as to what the answer might have been or as to the reason for the objection. You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken from the record; such matter is to be treated as though you had never known of it.

COURT'S INSTRUCTION NO. 5
EVIDENCE -- EXCLUDING STATEMENTS OF JUDGE

During the course of the trial I may have occasionally made comments to the lawyers, or asked questions of a witness, or admonished a witness concerning the manner in which he or she should respond to the questions of counsel. Do not assume from anything I said that I have any opinion concerning any of the issues in this case. Except for my instructions to you on the law, you should disregard anything I said during the trial in arriving at your own findings as to the facts.

COURT'S INSTRUCTION NO. 6
EVIDENCE -- JUDICIAL NOTICE

During the course of the trial, the court took judicial notice of certain facts or events. When the court takes judicial notice of some fact or event, you must accept the court's declaration as evidence, and regard the fact or event which has been judicially noticed as conclusively proved.

COURT'S INSTRUCTION NO. 7
EVIDENCE -- STIPULATIONS

In this case, the parties have agreed, or stipulated, as to certain facts. This means that they both agree that these facts are true. You should therefore treat these facts as having been conclusively proved.

COURT'S INSTRUCTION NO. 8
EVIDENCE -- DEPOSITIONS

Certain testimony has been read into evidence from depositions. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony the same as if it had been given in court.

COURT'S INSTRUCTION NO. 9
EVIDENCE -- INTERROGATORIES

During the course of the trial you heard reference to the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. You are to consider interrogatories and the answers to interrogatories the same as if the questions had been asked and answered here in court.

COURT'S INSTRUCTION NO. 10
EVIDENCE -- ADMISSIONS

During the course of the trial you heard reference to the phrase "requests for admissions." A request for admission is a written statement of fact that one party asks the other party to confirm or deny. You are to consider requests for admissions and the answers to requests for admissions the same as if the request had been asked and answered here in court.

COURT'S INSTRUCTION NO. 11
EVIDENCE -- DIRECT AND CIRCUMSTANTIAL

Evidence may be direct or circumstantial.

Direct evidence is direct proof of a fact, such as the 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.

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 testimony and evidence in the case.

You are to consider both direct and circumstantial 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.

COURT'S INSTRUCTION NO. 12
EVIDENCE -- CREDIBILITY OF WITNESSES

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.

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 evaluating the testimony of a witness, you may consider: (1) the opportunity and ability of the witness to see or hear or know the things testified to; (2) the witness' memory; (3) the witness' manner while testifying; (4) the witness' interest in the outcome of the case, if any; (5) the witness' bias or prejudice, if any; (6) whether other evidence contradicted the witness' testimony; (7) the reasonableness of the witness' testimony in light of all the evidence; and (8) any other factors that bear on believability. You may accept or reject the testimony of any witness in whole or in part. That is, you may believe everything a witness says, or part of it, or none of it.

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.

COURT'S INSTRUCTION NO. 13
EVIDENCE -- EXPERT WITNESSES

The rules of evidence provide that if scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify and state his or her opinion concerning such matters.

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

COURT'S INSTRUCTION NO. 14
IMPEACHMENT -- GENERALLY

A witness may be discredited or impeached by contradictory evidence, by a showing that: (1) the witness testified falsely concerning a material matter; or (2) at some other time, the witness said or did something that is inconsistent with the witness' present testimony; or (3) at some other time, the witness failed to say or do something that would be consistent with the present testimony had it been said or done.

If you believe that any witness has been so impeached, then it is for you alone to decide how much credibility or weight, if any, to give to the testimony of that witness.

COURT'S INSTRUCTION NO. 15
IMPEACHMENT -- REPUTATION FOR TRUTHFULNESS

A witness may also be discredited or impeached by evidence that the general reputation of the witness for truth and veracity is bad in the community where the witness now resides, or has recently resided.

If you believe that any witness has been so impeached, then it is for you alone to decide how much credibility or weight, if any, to give to the testimony of that witness.

COURT'S INSTRUCTION NO. 16
IMPEACHMENT -- PRIOR CONVICTION

The fact that a witness has previously been convicted of a felony, or a crime involving dishonesty or false statement, is also a factor you may consider in weighing the credibility of that witness. The fact of such a conviction does not necessarily destroy the witness' credibility, but is one of the circumstances you may take into account in determining the weight to give to the testimony.

COURT'S INSTRUCTION NO. 17
CORPORATION RESPONSIBLE FOR ACTS AND DECLARATIONS OF
ITS AGENTS AND EMPLOYEES

A corporation may act only through natural persons -- its agents or employees. In general, any agent or employee of a corporation may bind the corporation by acts and declarations made while acting within the scope of the authority delegated to him or her by the corporation, or within the scope of the agent's or employee's duties to the corporation.

COURT'S INSTRUCTION NO. 18A
BURDEN OF PROOF -- PREPONDERANCE OF THE EVIDENCE --
Single Claim

The burden is on the Plaintiff in a civil action such as this to prove every essential element of the claim by a "preponderance of the evidence." A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a preponderance of the evidence merely means to prove that the claim is more likely so than not so.

In determining whether any fact in issue has been proved by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of who called them, and all the exhibits received in evidence, regardless of who produced them. If the proof fails to establish any essential element of the Plaintiff's claim by a preponderance of the evidence, you should find for the Defendant as to that claim.

COURT'S INSTRUCTION NO. 18B
BURDEN OF PROOF -- PREPONDERANCE OF THE EVIDENCE --
Multiple Claims

In a civil action such as this, each party asserting a claim has the burden of proving every essential element of that claim by a "preponderance of the evidence." A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a preponderance of the evidence merely means to prove that the claim is more likely so than not so.

Where more than one claim is involved, as in this case, you should consider each claim, and the evidence pertaining to it, separately, as you would had each claim been tried before you separately; but in determining any fact in issue, you may consider the testimony of all the witnesses, regardless of who called them, and all the exhibits received in evidence, regardless of who produced them.

If a preponderance of the evidence does not

support each essential element of a claim, then you should find against the party having the burden of proof as to that claim.

COURT'S INSTRUCTION NO. 19
MULTIPLE PLAINTIFFS

There is more than one Plaintiff in this lawsuit. You should decide the case of each Plaintiff separately from and independently of the other, as if you were trying different lawsuits.

All instructions given apply to the case of each Plaintiff unless otherwise stated.

COURT'S INSTRUCTION NO. 20
MULTIPLE DEFENDANTS

Although there is more than one Defendant in this lawsuit, it does not follow from that fact alone that if one is liable all are liable. Each Defendant is entitled to a fair and separate consideration of that Defendant's own defense and is not to be prejudiced by your decision as to the others. All instructions given apply to the case against each Defendant unless otherwise stated.

You must decide each Defendant's case separately.

COURT'S INSTRUCTION NO. 21
TAKING NOTES DURING TRIAL

Some of you took notes during the trial.

Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes, or those of other jurors.

COURT'S INSTRUCTION NO. 22
QUESTIONS POSED BY JURORS

During the course of the trial, questions were posed by members of the jury. You should evaluate the answers to those questions in the same manner that you evaluate all of the other evidence.

COURT'S INSTRUCTION NO. 23
DAMAGES INSTRUCTION NOT RELEVANT TO LIABILITY

Of course, the fact that I have given you instructions concerning the issue of the Plaintiff's damages should not be interpreted in any way as an indication that I believe the Plaintiff should, or should not, prevail in this case.

COURT'S INSTRUCTION NO. 24
NO OUTSIDE RESEARCH

Remember that even during your deliberations, my mandate to you still applies that you not read any news stories or articles, listen to any radio, or watch any television reports about the case or about anyone who has anything to do with it. Do not do any research, such as consulting dictionaries, searching the internet, or using other reference materials, and do not make any investigation about the case on your own. And do not discuss the case in any manner with others, directly or through social media. You may only discuss the case with your fellow jurors during your deliberations, with all of you present.

COURT'S INSTRUCTION NO. 25
DUTY TO DELIBERATE

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. In other words, your verdict must be unanimous.

It is your duty as jurors 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 only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. 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.

Remember at all times, you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

COURT'S INSTRUCTION NO. 26A
VERDICT FORMS -- Single Verdict Form

Upon retiring to the jury room you should first select one of your number to act as your foreperson who will preside over your deliberations and will be your spokesperson here in court. A verdict form has been prepared for your convenience.

(Explain Verdict Form)

You will take the verdict form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill it in, date and sign it, and then return to the courtroom.

If, during your deliberations, you desire to communicate with the court, please put your message or question in a note, and have the foreperson sign the note. The foreperson will then contact the Courtroom Manager via the telephone located in the hallway outside the jury room. The Courtroom Manager will pick up the note and bring it to my attention. 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. I caution you, however, with

regard to any message or question you might send, that you should never state or specify your numerical division at the time. For example, you should never state that "x" number of jurors are leaning or voting one way and "x" number of jurors are leaning or voting another way.

COURT'S INSTRUCTION NO. 26B
VERDICT FORMS -- Multiple Verdict Forms

Upon retiring to the jury room you should first select one of your number to act as your foreperson who will preside over your deliberations and will be your spokesperson here in court. Verdict forms have been prepared for your convenience.

(Explain Verdict Forms)

You will take the verdict forms to the jury room and when you have reached unanimous agreement as to your verdicts, you will have your foreperson fill them in, date and sign them, and then return to the courtroom.

If, during your deliberations, you desire to communicate with the court, please put your message or question in a note, and have the foreperson sign the note. The foreperson will then contact the Courtroom Manager via the telephone located in the hallway outside the jury room. The Courtroom Manager will pick up the note and bring it to my attention. 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. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time. For example, you should never state that "x" number of jurors are leaning or voting one way and "x" number of jurors are leaning or voting another way.