IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

Plaintiff,

v. No.

Defendant.

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Members of the jury,

Now that you have heard all the evidence and the arguments of the lawyers, it is my duty to instruct you on the law which applies to this case. These instructions will be in three parts: first, the instructions on general rules that define and control the jury' s duties; second, the instructions that state the rules of law you must apply, i.e., what the plaintiff or the defendant must prove to establish their respective positions; and third, some rules for your deliberations. A copy of these instructions will be available for you in the jury room to consult if you find it necessary.

It is your duty to find the facts from all the evidence in the case. To those facts you must apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you and according to the law. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important.

It is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received in evidence, regardless of who may have produced them; all facts which may have been admitted or stipulated by the parties; and all facts and events which may have been judicially noticed.

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 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, during the course of a trial I may have 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 may have 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 may have said during the trial in arriving at your own findings as to the facts.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony, exhibits [depositions, answers to interrogatories, admissions] and stipulations of the parties 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.

You may also consider either direct or circumstantial evidence. Direct evidence is that contained in the testimony of a witness to a fact, the knowledge of which the witness acquired through his or her own senses. Indirect or circumstantial evidence is that knowledge which is inferred from known facts. It is not permissible to draw an inference from another inference. However, it is permissible to draw reasonable inferences from proven facts.

Sometimes direct evidence falls short of proving the final or all-important fact which a party seeks to prove. However, it is sometimes possible to prove facts of such significant or related character that the final or conclusive fact can readily be inferred from what has been proven. This is what is meant by proving a case by circumstantial evidence.

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 the witnesses and the weight to be given to their testimony. In weighing the testimony of a witness you should consider each witness' relationship to the parties; the witness' interest, if any, in the outcome

of the case; their manner of testifying; each witness' opportunity to observe or acquire knowledge concerning the facts about which he or she testified; the witness' 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.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

A witness may be discredited or "impeached" by contradictory evidence; or by evidence that at some other time the witness has said or done something, or has failed to say or do something which is inconsistent with the witness's present testimony.

If you believe that any witness has been impeached and discredited, it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

You are not required to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness's bearing and demeanor, or because of the inherent improbability of his or her testimony, or for other reasons sufficient to you, that such testimony is not worthy of belief.

On the other hand, 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.

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of his/her claim by a preponderance of the evidence. If the proof should fail to establish any essential element of plaintiff's claim by a preponderance of the evidence in the case, the jury should find for the defendant(s) as to that claim.

[The defendants have alleged certain affirmative defenses which will be discussed later in these instructions. The burden of establishing the essential facts as to these defenses is on the defendants.]

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

Those of you who have sat on criminal cases will have heard of proof beyond a reasonable doubt. That is a stricter standard, i.e., it requires more proof than a preponderance of evidence. The reasonable doubt standard does not apply to a civil case and you should therefore put it out of your mind.

An expert witness is one who possesses special or technical knowledge or skill upon the subject about which he or she testifies, that is, upon a subject with which ordinary men or women are not familiar. An expert witness differs from the ordinary witness in that the expert is permitted to express opinions as to the results of proven facts, although the expert may also testify as to facts themselves, as any other witness.

Expert opinions are not to be accepted as facts. Those opinions should be carefully weighed by the jury, with regard to the expert's education, training, experience, and sources of knowledge, as well as with regard to his or her prejudices, if any appear.

Expert witnesses are frequently paid special compensation by the party for whom they testify. Such compensation is entirely proper. Yet, because of it the jury should receive the expert's testimony with caution and weigh it carefully.

Questions have been asked in which an expert witness was asked to assume that certain facts were true and to give an opinion based upon that assumption. This is called a hypothetical question. If any fact assumed in the questions has not been established by the evidence, you should determine the effect of that omission upon the value of the opinion.

During the trial of this case, certain testimony has been presented to you by way of deposition, consisting 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, cannot be present to testify from the witness stand may be presented in writing under oath (or on a video recording played on a television set). Such testimony is entitled to the same consideration, and is to be judged as to credibility, and weighed, and otherwise considered by the jury, in so far as possible, in the same way as if the witness had been present, and had testified from the witness stand.

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

There has been introduced into evidence certain interrogatories -- that is, questions, together with answers signed and sworn to by the other party. A party is bound by his sworn answers.

By introducing an opposing party's answers to interrogatories, however, a party does not bind himself to these answers, and he may challenge them in whole or in part or may offer contrary evidence.

Some of you may have taken notes during the trial. Once you retire to the jury room you may refer to your notes, but only to refresh your memory of the witnesses' testimony. You are free to discuss the testimony of the witnesses with your fellow jurors, but each of you must rely upon your own individual memory as to what a witness did or did not say.

In discussing the testimony, you may not read your notes to your fellow jurors or otherwise tell them what you have written. You should never use your notes to persuade or influence other jurors. Your notes are not evidence. Your notes should carry no more weight than the unrecorded recollection of another juror.

A stipulation of facts is an agreement among the parties that a certain fact is true. You must regard such agreed facts as true.

The purpose of the law of damages is to award, as far as possible, just and fair compensation for the loss, if any, which resulted from the defendants' conduct. Just because I am instructing you on how to award damages does not mean that I have any opinion on whether or not the defendant(s) should be liable. If you find that the defendants are liable on the claims, as I have explained them, then you must award the plaintiff sufficient damages to fairly and justly compensate him for any injury proximately caused by the defendants' conduct.

These are known as compensatory or actual damages. Compensatory damages seek to make the plaintiff whole -- that is, to compensate him for the damage that he has suffered. Furthermore, compensatory damages are not limited merely to expenses that plaintiff may have borne. A prevailing plaintiff is entitled to compensatory damages for the physical injury, pain and suffering, mental anguish, shock and discomfort that he has suffered because of a defendant's conduct.

I remind you that you may award compensatory damages only for injuries that a plaintiff proves by a preponderance of the evidence were proximately caused by a defendant's wrongful conduct. The damages that you award must be fair and reasonable, neither inadequate nor excessive. You should not award compensatory damages for speculative injuries or based on sympathy, but only for those injuries that a plaintiff has actually suffered or likely to suffer in the future.

In awarding compensatory damages, if you decide to award them, you must be guided by dispassionate commonsense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require a plaintiff to prove the amount of his losses with mathematical precision, but only with as much accuracy as the circumstances permit.

In addition to actual damages, the law permits the jury, under certain circumstances, to award the injured person punitive damages, in order to punish the wrongdoer for some extraordinary misconduct, and to serve as an example or warning to the wrongdoer and others not to engage in that type of conduct in the future. Whether to award punitive damages, in addition to actual damages, is a matter exclusively within the discretion of you, the jury.

If you find from a preponderance of the evidence that the plaintiff is entitled to a verdict for actual or nominal damages, and you further find that the conduct of the defendants which proximately caused injury or damage to the plaintiff, was maliciously, or wantonly, or oppressively done, than you may award an amount you unanimously agree to be proper as punitive damages.

An act or a failure to act is "maliciously" done, if prompted or accompanied by ill will, or spite, or grudge toward the injured person.

An act or a failure to act is "wantonly" done, if done in reckless or callous disregard of, or indifference to, the rights of the injured person.

An act or a failure to act is "oppressively" done, if done in a way or manner that injures or damages, or otherwise violates the rights of another person with unnecessary harshness or severity, as by misuse or abuse of authority or power, or by taking advantage of some weakness or misfortune of another person.

In this case, there are four individual defendants. You must make the decision whether to award punitive damages and, if so, the amount awarded, as to each individual defendant separately. In this regard there is no joint responsibility.

Punitive damages may be allowed only if you should first unanimously award the plaintiff either actual or nominal damages against the particular defendant. The amount of such punitive damages, when awarded, 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 regard to any party in this case.

It is entirely within your discretion whether or not punitive damages should be awarded. You may decide that even though compensatory or nominal damages have been awarded, you believe that no punitive damages are called for.

There is no objective yardstick for measuring the amount of punitive damages that should be awarded against a particular defendant. You will have to use your own common sense and experience and determine what amount would be appropriate to punish the defendant and to create a deterrent example. The amount of punitive damages should be fair and reasonable and should be proportionate to the need to punish the defendant and to deter him and others from like wrongful conduct. You must consider the degree of reprehensibility of the defendant's conduct and the relationship between the amount of punitive damages to the

actual harm inflicted on the plaintiff. The amount of punitive damages awarded should not be based on whim or on unrestrained imagination.

In all instances, you are to use sound discretion in fixing an award of damages, drawing reasonable inferences where you deem appropriate from the facts and circumstances in evidence.

If you find, after considering all the evidence presented, that the plaintiff is entitled to a verdict in accordance with these instructions, but do not find the plaintiff suffered substantial or actual damages, you may award the plaintiff "nominal damages." "Nominal damages" are awarded as recognition that the plaintiff's rights have been violated. You would award nominal damages if you conclude that the only injury that a plaintiff suffered was the deprivation of his constitutional rights, without any resulting physical, emotional or financial damage. You award nominal damages in the compensatory damages blank.

You may not award both nominal and compensatory damages to a plaintiff; either he was tangibly injured, in which case you must award compensatory damages, or else he was not, in which case you may award nominal damages.

Nominal damages may not be awarded for more than a token sum such as $1.00.

When you retire, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after considering all the evidence, discussing it fully with the other jurors, and listening to the views of your fellow jurors.

Do not be afraid to change your opinion if you think you are wrong. But do not come to a decision simply because other jurors think it is right.

This case has taken a great deal of time and effort to prepare and try. There is no reason to think that it could be better tried or that another jury is better qualified to decide it. It is important therefore that you reach a verdict if you can do so conscientiously. Therefore, if it looks at some point as if you may have difficulty in reaching a unanimous verdict, and if the greater number of you are agreed on a verdict, the other jurors may want to ask themselves about the basis for their feelings when a substantial number have reached a different conclusion. You should not hesitate to reconsider your views from time to time and to change them if you are persuaded that this is appropriate.

It is important that you attempt to return a verdict but, of course, only if each of you can do so after having made his or her own conscientious determination. Do not surrender an honest conviction as to the weight and effect of the evidence simply to reach a verdict.

If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or orally here in open court. Remember that you are not to tell anyone -- including me -- how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged.

After you have reached a verdict, your foreperson will fill in the forms that have been provided for you, sign and date the forms and advise the marshal that you are ready to return to the courtroom.