

**JUDGE DENISE POSSE LINDBERG
STOCK CIVIL JURY INSTRUCTIONS**

TABLE OF CONTENTS

Stock Opening Instructions

| | |
|--|----|
| Introduction and General Instructions..... | 1 |
| Summary of the Case..... | 2 |
| Role of Judge, Jury and Lawyers..... | 3 |
| Evidence..... | 4 |
| Objections..... | 5 |
| Court Conferences..... | 6 |
| Order of Trial..... | 7 |
| Note-taking..... | 8 |
| Juror Questions..... | 9 |
| View of the Scene..... | 10 |
| Recesses and Admonition..... | 11 |

Stock Closing Instructions

| | |
|--|--|
| Closing Roadmap..... | |
| Burden of Proof–Preponderance of the Evidence..... | |
| Judging Facts..... | |
| Direct/Circumstantial Evidence..... | |
| Juror Duties..... | |
| Judicial Neutrality..... | |
| Witness Credibility..... | |
| Evidence..... | |
| Charts and Summaries..... | |
| Fact vs. Expert Witnesses..... | |
| Legal Rulings..... | |
| Closing Arguments..... | |
| Juror Deliberations..... | |
| Selection of Foreperson/Foreperson Duties..... | |
| Do Not Resort to Chance in Rendering a Verdict..... | |
| Damages 1–Economic vs. Non-Economic Damages..... | |
| Damages 2–Determining Damages..... | |
| Damages 3–No Inference to be Drawn from Damages Instruction..... | |
| Making Findings of Fact/Verdict Form..... | |

**IN THE THIRD DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

_____,
Plaintiff, : **PRELIMINARY INSTRUCTIONS**

vs . :
: CASE NO. _____

_____,
Defendant. :

Preliminary instructions given to the jury impaneled in this case on the ____ day of _____, 2006.

Judge Denise Posse Lindberg, Third District Court

INSTRUCTION NO. 1

Members of the Jury, we are about to begin the trial of this case. I will give you some instructions now, and some later. These instructions are to help you understand what will be presented to you and how you should conduct yourself during the trial. You are required to consider and follow all my instructions.

Keep an open mind throughout the trial. At the end of the trial you will discuss the evidence and reach a verdict. You took an oath to “well and truly try the issues pending between the parties” and to “render a true and just verdict.” The oath is your promise to do your duty as a member of the jury. Be alert. Pay attention. Follow my instructions.

INSTRUCTION NO. 2

The party who brings a lawsuit is called the plaintiff. In this case the plaintiff is _____ . The party against whom the suit is brought is called the defendant. In this case the defendant is _____. The plaintiff seeks to recover for damages resulting from _____ that occurred on or about _____.

Note: the parties may submit a brief, stipulated summary of the case for inclusion in this instruction.

INSTRUCTION NO. 3

All of us, judge, jury and lawyers, are officers of the court and have different roles during the trial:

- As the judge, I will supervise the trial, decide legal issues, and instruct you on the law.
- As the jury, you must follow the law as you weigh the evidence and decide the disputed issues of fact in this case. Factual issues relate to what did, or did not, happen in this case.
- The lawyers will present evidence and try to persuade you to decide the case in one way or the other.

Neither the lawyers nor I decide the case. That is your role. Do not be influenced by what you think our opinions might be. Make your decision based on the evidence presented in court and on the law given in my instructions.

INSTRUCTION NO. 4

As jurors you will decide whether the plaintiff has proven his case against the defendant. You must base your decision only on the evidence.

The evidence in the case will consist of the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received in evidence, regardless of who may have introduced them; and all facts which may have been judicially noticed, and which I instruct you to take as true for the purposes of this case.

Depositions may also be received in evidence. Depositions contain sworn testimony, with the lawyer for each party being entitled to ask questions. Testimony provided in a deposition may be read to you in open court or may be seen on a video monitor. Deposition testimony is to be considered by you, subject to the same instructions which apply to witnesses testifying in open court.

Statements and arguments of lawyers are not evidence in the case, unless made as an admission or stipulation of fact. When the lawyers on both sides stipulate or agree to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as proved.

I may take judicial notice of certain facts. If I declare that I will take judicial notice of some fact, you must accept that fact as true.

Any evidence as to which I sustain an objection, and any evidence I order to be stricken, must be entirely disregarded.

Anything you may have seen or heard outside the courtroom is not evidence, and must be entirely disregarded.

Some evidence may be admitted for a limited purpose only. If I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

In considering the evidence presented, you are not limited to the bald statements of the witnesses. That is to say, you are not limited just to what you see and hear as the witnesses testify. From the facts which you find have been proved, you can draw whatever reasonable inferences are justified in light of reason and experience.

INSTRUCTION NO. 5

Rules govern what evidence may be presented to you. On the basis of these rules, the lawyers may object to proposed evidence. Each lawyer has the duty to object when the other side offers testimony or other evidence that the lawyer believes is not properly admissible. You should not be angry at a lawyer or the client because the lawyer has objected to proposed evidence.

If an objection is made, I will rule in one of two ways. If I sustain the objection, the proposed evidence will not be allowed. If I overrule the objection, the evidence will be allowed. Do not evaluate evidence on the basis of whether objections are made.

You should not infer from any ruling or other comment I may make that I have any opinion on the merits of the case that favors one side or the other

INSTRUCTION NO. 6

During the trial it may be necessary for me to confer with the lawyers out of your hearing regarding questions of law or procedure that I have to decide. On some occasions you may be excused from the courtroom for the same reason. I will try to limit these interruptions as much as possible, but you should remember the importance of the matter you are here to determine, and should be patient even though the case may seem to go slowly.

INSTRUCTION NO. 7

I will now explain how the trial will unfold.

The plaintiff's lawyer may make an opening statement outlining the case. The defendant's lawyer may also make an opening statement outlining the case immediately after the plaintiff's statement, or may defer making an opening statement until the conclusion of the plaintiff's case. Neither party is required to make an opening statement. What is said in the opening statement is not evidence, but is simply designed to provide you with an introduction to the evidence that party intends to produce.

The plaintiff will introduce evidence through testimony of witnesses and exhibits. At the conclusion of the plaintiff's case, the defendant may introduce evidence. The defendant, however, is not obliged to introduce any evidence or to call any witnesses. If the defendant introduces evidence, the plaintiff may then introduce rebuttal evidence.

After both sides have presented all their evidence, I will give you final instructions on the law you must follow in reaching your verdict.

You will then hear closing arguments from the attorneys.

The parties will talk with you about you as to what they believe the evidence has shown, and the inferences which they think you should draw from the evidence. What is said in a closing argument, just as what is said in an opening statement, is not evidence. The arguments are designed to present to you the contentions of the parties based on the evidence introduced. The plaintiff has the right to open and to close the argument.

INSTRUCTION NO. 8

If you want to do so, you are free to take notes during the trial to help you remember the evidence, but do not let note-taking distract you. Your notes are not evidence, and may be incomplete. For example, sometimes the importance of certain testimony is not immediately apparent at the time it is given, and thus it may not be written down. However, that testimony may take on greater importance later in the trial once all the evidence has been presented. Also be aware of the common tendency to attach undue importance to matters to things that have been written down.

Additionally, you are going to be called upon to make certain judgments about who and what you believe. Often it is hard to say exactly what it is that leads one to believe—or not believe, a witness—but often we make those judgments based on our personal observations of the witnesses as they are testifying. Do not let your desire to write down some notes get in the way of paying close attention to the witnesses.

Finally, do not compare your notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Above all, you should rely on your individual and collective memory of the evidence presented when it comes time to deliberate and render a decision in this case.

INSTRUCTION NO. 9

During the trial you may ask questions of the witnesses. However, to make sure that the questions are legally appropriate, we will use the following procedure:

After the attorneys have finished questioning each witness I will ask if you have any questions. If you do, please do not ask the question out loud. Write it down and hand it to the bailiff.

The bailiff will hand me your question. I will review it with the attorneys to make sure it is legally permissible. If the question is appropriate, I will ask it. If it isn't, I won't. The attorneys will then have the opportunity to ask any follow up questions that may have been triggered by the question or response.

INSTRUCTION NO. 10

Since this case involves an incident that occurred at a particular location, you may be tempted to visit the scene yourself. Please do not do so. In view of the time that elapses before a case comes to trial, substantial changes may have occurred at the location after the event that gives rise to this lawsuit. Also, in making an unguided visit without the benefit of explanation, you might get erroneous impressions. Therefore, even if you happen to live near the location, please avoid going to it or near it until the case is over.

INSTRUCTION NO. 11

From time to time I may call recesses. It may be for a few minutes, or longer. You will not be required to remain together while we are in recess, but during that time:

- Do not talk about this case with anyone—not family, not friends, not even with each other.
- Do not do any research or make any investigation about the case on your own.
- Do not mingle or talk with the lawyers, parties, witnesses, or anyone else connected with the case until the trial is over. Court clerks or bailiffs can answer general questions, such as the length of breaks or the location of restrooms. However, they cannot comment about the case or anyone involved. The goal is to avoid the possibility, or even the impression, that anyone is trying to influence you improperly. In this way the parties can be assured of the absolute impartiality they are entitled to expect from you as jurors.
- Do not read or listen to any news reports about this case until the trial is over. If a newspaper headline catches your eye, do not examine the article further. Media accounts may be inaccurate, or may contain matters that are not proper for you to consider in reaching your verdict. A proper verdict must be based only on evidence presented in this courtroom.
- If you observe anything that violates any of these instructions, report it immediately to a clerk or bailiff. Do not, however, discuss with your fellow jurors either that fact, or any other fact that you feel necessary to bring to my attention.

Now, please give the lawyers your close attention as they present their opening statements.

**IN THE THIRD DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

| | | |
|------------|---|----------------------------------|
| | : | |
| _____ , | | |
| Plaintiff, | : | CLOSING JURY INSTRUCTIONS |
| vs. | : | |
| | : | CASE NO. _____ |
| _____ , | | |
| Defendant. | : | |

The jury is hereby charged with the law that applies to this case, as reflected in these instructions numbered () through (), inclusive.

DATED this ____ day of _____, 20__.

Judge Denise Posse Lindberg

INSTRUCTION NO. ____

Members of the jury, thank you for your attention during this trial. You now have all the evidence. Three things remain to be done:

First, I will give you additional instructions that you will follow in deciding this case.

Second, the attorneys will give their closing arguments. The plaintiff will go first, then the defense. The plaintiff may give a rebuttal to the defendant's argument.

Finally, you will go to the jury room to decide the case.

INSTRUCTION NO. ____

The burden of proof in a civil case rests with the party asserting the claim. Generally, that party must prove the claim by a “preponderance of the evidence” in order to prevail in the lawsuit.

The phrase “preponderance of the evidence” refers to the amount of proof that a party must present in order to establish the truth of the claim. By this we mean that when you consider all the evidence presented by the party, it must carry greater weight and convincing force than the evidence presented by the other side. The preponderance of the evidence is not necessarily determined by the number of witnesses, nor the amount of the testimony. You must also evaluate the credibility of the testimony received. In the end, you must determine whether it is more likely than not that the party proved the claim.

In order to decide if a party has proved the claim by a preponderance of the evidence you must consider and weigh all the evidence impartially, fairly and honestly. If, after considering all the evidence, you conclude that the plaintiff, _____, proved (his)(her) claim by a preponderance of the evidence, an award in (his)(her) favor is appropriate. On the other hand, if after considering all the evidence, you conclude that

- the evidence is evenly balanced—that is, it is just as likely to be true as not true, or
- that the other side’s position is more convincing,

then you must find that the claim has not been proved. In that case, the verdict must be “no cause of action” with respect to that claim.

INSTRUCTION NO. ____

As members of the jury you are the sole judges of the facts. Facts are those things that are related to questions of “who,” “what,” “where,” “when,” or “how.” Make your decisions about the facts based on the evidence presented to you, not on speculation. Applying the decisions you make about the facts in this case to the law given in these instructions will help you decide whether the plaintiff has proved (his)(her) case.

INSTRUCTION NO. ____

Facts may be proved by direct or circumstantial evidence. The law does not treat one type of evidence as better than the other.

Direct evidence can prove a fact by itself. It usually comes from a witness who perceived firsthand the fact in question. For example, if a witness testified he looked outside and saw it was raining, that would be direct evidence that it had rained.

Circumstantial evidence is *indirect* evidence. It usually comes from one or more witnesses who perceived a set of related events, but not the fact in question. However, based on that testimony someone could conclude that the fact in question had occurred. For example, if a witness testified that she looked outside and saw that the ground was wet and people were closing their umbrellas, that would be circumstantial evidence that it had rained.

There must be enough evidence—direct, circumstantial, or some of both—to convince you that the claim has been proved. It is up to you to decide.

INSTRUCTION NO. ____

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard in court. Deciding what the facts are is your job, not mine.

Your second duty is to take the law I give you in the instructions, apply it to the facts, and decide if the plaintiff has proved by a preponderance of the evidence the claim(s) the plaintiff has made against the defendant.

You are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before trial, any instructions I may have given you during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole. The order in which the instructions are given does not mean that some instructions are more important than others.

Perform your duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way. In other words, do not make your decision in this case because you feel sorry for anyone or angry at anyone. [You should also not let yourselves be influenced by public opinion about this case, if any.]

Note: use bracketed sentence only if appropriate under the facts of the case.

INSTRUCTION NO. ___

As the judge, I am neutral. If I have said or done anything that makes you think I favor one side or the other, that was not my intention. Do not interpret any decisions I may have made to suggest that I have a particular view of the parties, the evidence, or the decision you should reach.

INSTRUCTION NO. _____

In reaching your verdict you will need to decide how believable each witness was. Use your judgment and common sense. Let me suggest a few things to think about as you weigh each witness's testimony:

- How good was the witness's opportunity to see, hear, or otherwise observe what the witness testified about?
- How good was the witness's memory?
- Does the witness have something to gain or lose from this case?
- Does the witness have any connection to the people involved in this case?
- Does the witness have a reason to lie or slant the testimony?
- Was the witness's testimony consistent over time? If not, is there a good reason for the inconsistency? If the witness was inconsistent, was it about something important or unimportant?
- How believable was the witness's testimony in light of other evidence presented at trial?
- How believable was the witness's testimony in light of human experience?
- Was there anything about the way the witness testified that made the testimony more or less believable?

In deciding whether or not to believe a witness, you may also consider anything else you think is important.

You do not have to believe everything that a witness said. You may believe part and disbelieve the rest. On the other hand, if you are convinced that a witness lied, you may disbelieve anything else that the witness said. In other words, you may believe all, part, or none of a witness's testimony. You may believe the testimony of one witness even if others testified

differently. You may believe the testimony of one witness against the testimony of many others, or the testimony of many witnesses against one.

In deciding whether a witness testified truthfully, remember that no one's memory is perfect. Honest people may remember the same event differently.

INSTRUCTION NO. _____

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that may have occurred outside of court influence your decision in any way.

Evidence includes:

- what the witnesses said while they were testifying under oath,
- any exhibits allowed into evidence,
- any stipulations (that is, agreement as to certain facts) made by the lawyers, and
- any facts of which I may have taken judicial notice.

Nothing else is evidence. The lawyers statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. My comments or questions, if any, are not evidence.

Make your decision based only on the evidence, as I have defined it here, and nothing else. In reaching your verdict consider all the evidence presented. You may also draw all reasonable inferences from that evidence.

INSTRUCTION NO.____

Certain charts and summaries have been shown to you in order to present information from books, records or other documents that are in evidence in the case. However, charts and summaries are not—by themselves—evidence, or proof of any facts. If the facts or summaries do not reflect correctly the evidence in the case, you must disregard them.

INSTRUCTION NO.____

There are two types of witnesses: fact witnesses and expert witnesses. Usually a fact witness can testify only about facts that (he)(she) can see, hear, touch, taste or smell. An expert witness has scientific, technical or other special knowledge that allows the witness to give an opinion. An expert's knowledge can come from training, education, experience or skill. Experts can testify about facts, and they can give their opinions in their area of expertise.

[You may have to weigh one expert's opinion against another's.] In weighing the opinions of experts, you may look at their qualifications, the reasoning process the expert(s) used, and the overall credibility of the expert(s') testimony. You may also look at things like bias, consistency, and reputation.

Use your common sense in evaluating all witnesses, including expert witnesses. You do not have to accept an expert's opinion. You may accept it all, reject it all, or accept part and reject part. Give it whatever weight you think it deserves.

INSTRUCTION NO. _____

During the trial I have made certain rulings. I made those rulings based on the law, and not because I favor one side or the other.

If I:

- sustained an objection,
- did not accept evidence offered by one side or the other, or
- ordered that certain testimony be stricken,

then you must not consider those matters in reaching your verdict.

INSTRUCTION NO.____

In a moment you will hear the lawyers give their closing arguments. Remember that the lawyers trying this case are not on trial. Any feelings you may have about them should not influence your decision in this case. They are advocates doing their best to represent their client's interests as they explain their view of the case. If in their closing arguments the lawyers say anything about the evidence that conflicts with what you remember, you are to rely on your memory of the evidence. If they say anything about the law that conflicts with these instructions, you are to rely on these instructions.

INSTRUCTION NO. ____

In the jury room, discuss the evidence and speak your minds with each other. Listen carefully and respectfully to each other's views and keep an open mind about what others have to say. I recommend that you not commit yourselves to a particular verdict before you discuss all the evidence. Open discussion should help you reach agreement on a verdict. Remember that your role here is to be judges, not advocates for one side or the other.

If there is a difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you become convinced that your earlier opinion was wrong. On the other hand, do not give up your honestly held views about the evidence simply to agree on a verdict, or just to get the case over with. In the end, your vote must be your own. Try to reach agreement on your verdict, but only if you can do so honestly and in good conscience.

INSTRUCTION NO. _____

Among the first things you should do when you go to the jury room to deliberate is to appoint someone to serve as the jury foreperson. The foreperson should not dominate the jury's discussion. Instead, the foreperson should facilitate discussion of all the evidence and ensure that all members of the jury get a chance to speak. The foreperson's opinions should be given the same weight as that of other members of the jury. Once the jury has reached a verdict, the foreperson is responsible for filling out and signing the verdict form(s) on behalf of the entire jury.

INSTRUCTION NO.____

In reaching a verdict you may not draw straws, flip a coin or resort to other methods of chance. In the end, the answers you give as part of your verdict must represent each juror's thoughtful and considered judgment based on the evidence presented during the trial.

INSTRUCTION NO. ____

If you find that the plaintiff has proved (his)(her) claim against the defendant, then it is your duty to award the plaintiff such damages, if any, that you find by a preponderance of the evidence will fairly and adequately compensate (him)(her) for the injury and damages sustained. The amount of the damage award may include “economic” damages and “non-economic” damages.

“Economic damages” refers to money awarded to compensate a plaintiff adequately for actual, measurable losses or costs (he)(she) experienced because of the defendant’s wrongful actions. This can include, but is not limited to, the reasonable value of medical expenses incurred, lost wages, out-of-pocket expenses, etc.

“Non-economic damages” refers to money awarded to compensate for other losses experienced by the plaintiff because of the defendant’s actions. It includes such things as compensation for pain, discomfort, mental and physical suffering, the loss of financial support (past and future), loss of love, companionship, and comfort, etc.

INSTRUCTION NO. ___

If you decide that the plaintiff is entitled to recover damages, you should then determine what amount of damages should be awarded. It is often helpful to first discuss all the evidence regarding damages. Sometimes jurors take turns expressing their own independent judgment, based on the evidence, as to what that amount should be. If so, each of you should consider thoughtfully the estimates offered by your fellow jurors, and the reasons for why they think their estimates are the proper amount that should be awarded. Evaluate those estimates in light of the law given in these instructions and the evidence presented at trial. After discussion, the jury as a whole may agree with an estimate put forward by a juror, or the jury may determine that some other amount is proper.

What you may not do is agree in advance—and without considering the evidence—to take each juror's estimate of damages, come up with an average, and make that average the amount of your award.

INSTRUCTION NO.____

You should not take the fact that I have instructed you concerning damages as an indication that I believe that damages in any particular amount should or should not be awarded to plaintiff. The instructions regarding damages are given as a guide in case you find from a preponderance of the evidence that damages should be awarded. If you find that there should be no damages awarded, you may disregard those particular instructions.

INSTRUCTION NO. _____

Part of your duty is to make findings of fact on certain questions submitted to you for decision. In making your findings of fact, bear in mind that the burden of proving any disputed fact rests on the party claiming that fact to be true. What's more, that fact must be proved by a preponderance of the evidence.

Because this is a civil action, at least six jurors must agree on the answer to each question put to you in the verdict form. However, it need not be the same six jurors that agree on each question. As soon as six or more of you have agreed on the answer to each question put to you in the verdict form, the foreperson should sign and date the form(s), and inform the bailiff that you have reached a verdict.