STANDARD PRELIMINARY INSTRUCTIONS - JUDGE KNOWLES

Members of the Jury:

Now that you have been sworn, I will give you some preliminary instructions to guide you in your participation in the trial. At the end of the trial, I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions – both those I give you now and those I give you later - are equally binding on you.

Duty of the Jury

It will be your duty to find from the evidence what the facts are. You, and you alone, are the judges of the facts. You will then have to apply to those facts the law that I will give to you. You must follow that law whether you agree with it or not. I will decide all questions of law which arise during trial, and before you retire to deliberate at the close of the case, I will instruct you on the law that you must follow and apply in rendering your verdict.

During the trial, you should keep an open mind and should not form or express any opinion about the case one way or the other until you have heard all of the testimony and evidence, the closing arguments of the lawyers, and my instructions to you on the applicable law. While the trial is in progress, you must not discuss the case in any manner among yourselves or with anyone else, nor should you permit anyone to discuss it in your presence.

From time to time during the trial, it may become necessary

for me to talk with the lawyers out of your hearing with regard to questions of law or procedure that require consideration by the Court alone, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess where you will be excused from the courtroom. If I ask the attorneys to approach the bench for a discussion with me, please do not try to listen to what we are saying, because the reason I have called them to the bench is to prevent you from hearing our discussions.

The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error. We will of course do what we can to keep the number and length of these conferences to a minimum, 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. I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be.

Indeed, nothing I may say or do during the course of the trial is intended to indicate, or should be taken by you as indicating, what your verdict should be. You may notice me writing from time to time. Don't be influenced by my writing or taking notes at times. What I write down <u>may</u> have nothing to do with what you will

be concerned with at this trial.

Evidence

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other things received into the record as exhibits, and any facts about which the lawyers agree or to which they stipulate, or that the court may instruct you to find.

There are two types 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.

[If applicable: Evidence may be presented by the reading of a deposition or the playing of a deposition if it has been videotaped. A deposition is testimony taken under oath before the trial and preserved in writing or on videotape. You are you consider such deposition testimony as if the witness had appeared live in court.]

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

1. Nothing said by any of the lawyers in this case is

evidence, unless I specifically instruct you otherwise. Opening statements, closing arguments, and questions by lawyers are not evidence. Although evidence is presented by asking questions, the questions themselves are not evidence. An insinuation contained in a question is not evidence. You should consider a question only as it gives meaning to a witness’s answer.

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, which means the witness will not answer the question, ignore the question. If it is overruled, which means the witness will answer the question, treat that 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.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness' testimony to accept or reject. As the sole judges of the facts, you must determine which of the witnesses' testimony you accept, what weight you attach to it, and what inferences you will draw from it. The law does not require you to accept all of the evidence. In deciding what evidence you will accept, you must make your own evaluation of the testimony given by each of the witnesses and determine the weight you will give to that testimony. You must decide which witnesses you believe and how important you think their testimony is. You are not required to accept or reject everything a witness says. You are free to believe all, none, or part of any person's testimony.

In deciding which testimony you believe, you should rely on your own common sense and everyday experience. There is no fixed set of rules to use in deciding whether you believe a witness, but it may help you to think about the following questions:

(1) Was the witness able to see, hear, or be aware of the things about which the witness testified?

(2) How well was the witness able to recall and describe

these things?

(3) How long was the witness watching or listening?

(4) Was the witness distracted in any way?

(5) Did the witness have a good memory?

(6) How did the witness look and act while testifying?

(7) Was the witness making an honest effort to tell the truth, or did the witness evade questions?

(8) Did the witness have any interest in the outcome of the case?

(9) Did the witness have any motive, bias, or prejudice that would influence the witness's testimony?

(10) How reasonable was the witness's testimony when you consider all the evidence in the case?

(11) Was the testimony contradicted by what that witness has said or done at another time, by the testimony of other witnesses, or by other evidence?

Burden of Proof

This is a civil case. Plaintiff asserts claims against Defendant [and Defendant asserts claims against Plaintiff. Defendant's claims against Plaintiff are called "counter-claims."] Plaintiff has the burden of proving his case against Defendant by a preponderance of the evidence, [and Defendant has the burden of proving his case against Plaintiff by a preponderance of the

evidence.] The term preponderance of the evidence means that the party who has the burden of proof on an issue has to produce evidence which, when considered in light of all the facts, leads you to believe that what that party claims is more likely true than not. If you were to put the plaintiff's and the defendant's evidence on opposite sides of the scales, the plaintiff would have to make the scales tip somewhat on his [or her] side. If the party having the burden of proof on an issue fails to meet this burden, your verdict must be for the other party.

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.

Plaintiff's and Defendant's Theories

A. In this case, plaintiff claims:

B. In this case, the defendant claims:

I will give you detailed instructions on the law at the end of the case, and those instructions will control your deliberations and decision. But in order to help you follow the evidence, I will now give you a brief summary of the elements which plaintiff must prove to make his case: (summarize elements, as appropriate)

Conduct of Jurors

Now, a few words about your conduct as jurors.

First, I instruct you that during the trial you are not to discuss the case either among yourselves or with anyone else, nor should you permit anyone to discuss it with you. You must keep an open mind until you have heard all the evidence, the attorneys' closing arguments, and my final instructions concerning the law. Any discussions before the conclusion of the case would be premature and improper. Until you retire to the jury room at the end of the case to deliberate on your verdict, you simply are not to talk about this case. If anyone should try to talk to you about it, bring it to the court's attention promptly. Although it is a normal human tendency to talk with people with whom one is placed in contact, please do not, during the time you serve on this jury, talk either inside or outside of the courtroom, with any of the parties, their attorneys or any witness. By this I mean that you should not talk about the case, nor should you talk at all, even to say "Hello" or to pass the time of day. The attorneys are instructed not to talk to you, so do not be upset with them if they do not do so. They are simply following the Court's instructions. In no other way can all the parties be assured of the absolute impartiality they are entitled to expect from you as jurors.

Second, do not read or listen to anything touching on this case in any way.

Third, do not try to do any research or make any investigation about the case on your own, even though you my be tempted to do so. For example, do not visit the scene of an accident, read any text books or articles concerning any issue in this case, or consult any other source of information, including other persons, members of your family, or friends. If you were to do that you would be getting information that is not evidence. You must decide this case only on the evidence and law presented to you during the trial. Any juror who receives any information about this case other than that presented at trial must notify the Court immediately.

Finally, do not form any opinion until all the evidence is in. Keep an open mind until you start your deliberations at the end of the case.

During this trial, I will permit you to take notes. We will provide you with note pads and pens for that purpose. Many courts do not permit note taking by jurors, and a word of caution is in order. There is always a tendency to attach undue importance to matters which one has written down. Some testimony which may appear unimportant at the time presented, and thus not written down, could take on greater importance later in the trial in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory. Please remember that they are for your own personal use during the

trial or during your deliberations -- they are not to be given or read to anyone else. When you leave for lunch or at night, you must leave your notes in the jury room.

Course of Trial

The trial will now begin. First, each side may make an opening statement. An opening statement is neither evidence nor argument; it is an outline of what that party intends to prove, offered to help you follow the evidence.

Next, the plaintiff will present his [or her] witnesses, and the defendant may cross-examine them. [Normally, the Plaintiff will present all of his or her evidence before the other party [ies] presents any evidence. Exceptions are sometimes made, however, usually to accommodate a witness.] Then, the defendant may present his [or her] witnesses, and the plaintiff may cross-examine them. 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 that, the attorneys will make their closing arguments in order to summarize and interpret the evidence for you. What is said in closing argument, just as what is said in 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 close the

argument. After presentation of the closing arguments, the court will give you detailed instructions on the law to be applied to the facts which you will determine.

You will then retire to the jury room to deliberate on your verdict.