

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

<p>ELDRIDGE LUMBERYARD, INC.,</p> <p>Plaintiff,</p> <p>vs.</p> <p>DIFCO, INC,</p> <p>Defendant.</p>	<p>No. LACE134898</p> <p>FILED</p> <p>FEB 15 2023</p> <p>JURY INSTRUCTIONS</p> <p>CLERK OF DISTRICT COURT SCOTT COUNTY IOWA</p>
<p>DIFCO, INC,</p> <p>Counter-Claim Plaintiff,</p> <p>vs.</p> <p>ELDRIDGE LUMBERYARD, INC.,</p> <p>Counter-Claim Defendant.</p>	

JURORS:

We will soon begin receiving evidence in this trial. In order to better prepare you for your duties, I will now give you the following preliminary instructions. You as the jury are the judge of the facts as I am the Judge of the law. Therefore, so that you can better apply the law to the facts as they are received during this trial, the court will preliminarily instruct you on certain matters. Complete and detailed instructions will be given to you at the conclusion of this trial.

You are instructed as follows:

INSTRUCTION NO. 1

Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 2

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters of which judicial notice was taken, etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 3

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 4

The court attendant will hand out notebooks and pencils. You are permitted to take notes during the trial and have your notes with you during your deliberations. You are not required to take notes. If you believe note-taking might distract your attention from the evidence or the testimony of the witnesses in this case, then do not take notes. The evidence will be presented to you only one time so your careful attention during trial is very important. On the other hand, if you think taking notes might better focus your attention on the witnesses and the evidence, or might better help you recall what went on during the trial, feel free to take notes.

Remember that your notes are intended only to be a help to your memory. They should not take precedence over your own independent recollection of the evidence.

Whenever there is a recess in the trial, please leave your notebooks and pencils on your chairs. They will be left there during short recesses, and they will be collected during overnight recesses and retained by the court attendant. At no time during or after the trial will anyone, including myself, look at any of your notes. At the end of the trial, after you have finished your deliberations, I will ask each of you to give your notebooks to the court attendant. The court attendant will destroy them immediately after the return of your verdict.

If you wish to make use of the notebook, please write your name on the first page and begin taking notes on the second page. If you don't want to take notes, just write your name on the first page and place the notebook on the floor by your chair.

At the end of the trial I will also instruct you on the law of the case as it applies to the evidence. I will include these instructions in my final instructions. The court, by instructing you at this time, does not mean to imply that these are the most important instructions or that they will be the only ones given to you. Rather, they are given to you preliminarily to enable you to understand the evidence as it is received during the course of the trial.

INSTRUCTION NO. 5

Beware of allowing your decision to be influenced by "implicit biases." Everyone, including me, has certain unconscious attitudes, assumptions, perceptions, fears, and stereotypes. These preconceptions can affect what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and the Court's jury instructions. Our system of justice is counting on you to render a fair decision based on the law and the evidence, not on biases. Therefore, challenge your own conclusions to be certain they are based on evidence and not upon a subconscious attitude or bias. One way to do this is to ask yourself if your conclusion would remain the same if the person's sex, race, religion, sexual orientation, national origin, age or disability were more like your own.

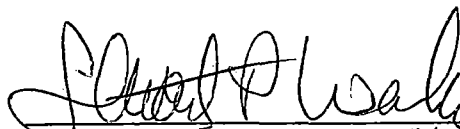
INSTRUCTION NO. 6

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, Google, Yahoo, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Maps or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers or the Court. This includes using the Internet to research events or people referenced in the trial.

This case must be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we don't know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules.

Dated: February 13, 2023.

A handwritten signature in black ink, appearing to read "Stuart P. Werling", written over a horizontal line.

Stuart P. Werling, Judge, 7th Judicial District