

INTERIM INSTRUCTIONS

Instructions at First Recess

We're going to take our first break in the trial, and I want to remind you about what I told you when we started. Until the trial is over, don't discuss this case with anyone other than the other members of the jury, and then only when you begin your deliberations. If anyone tries to talk to you about the case, don't talk to that person or to your fellow jurors; tell the bailiff or me immediately. Don't read or listen to any news reports about the trial. And remember to keep an open mind until all of the evidence is complete and until you have heard the views of the other members of the jury. If you need to speak with me about anything, just give a note to the bailiff to give to me.

I might not repeat this each time we take a break, but keep it in mind throughout the trial and especially whenever we take a break.

Judicial Notice

[This instruction to be given only if judicial notice is being taken of certain facts.]

I've agreed with the lawyers that I'm going to take what is called "judicial notice" of certain facts. That means that I've accepted certain facts as true because they were easy to determine, generally known and not subject to reasonable dispute. I'm doing that to save all of us time during the trial. Specifically, I am taking judicial notice of _____. You must accept these facts as true, just as if they had been conclusively proven to you here in court.

Instruction if a “Mary Carter” Agreement is at Issue

[If applicable, this instruction can be given on an interim basis when the issue is presented. It could also be considered as a part of optional opening instructions, if the issue seems certain to arise in the case.]

_____, one of the original defendants, has settled with the plaintiff, not admitting liability but paying a sum of money in exchange for the plaintiff's dismissal of the claims against _____. In addition, _____ and the plaintiff agreed that _____ now has a financial interest in this suit and will receive a portion of any judgment which the plaintiff might receive against the remaining defendants. The amount of money which _____ paid in settlement and the amount of its share of any judgment that might be recovered by the plaintiff are not relevant to your deliberations, but you are entitled to know that there is such an agreement when you weigh the testimony of _____ through its officers and employees. In effect, the settlement means that some of the original parties have been re-aligned in the case and that _____ is now on plaintiff's side.

Instruction if Settling Person is a Witness

You've heard testimony that [a witness] who was also involved in this incident settled his claim. This testimony was presented only to show that this witness might be biased or might have a particular interest in the outcome of this case. You must not consider the settlement as evidence that the defendant thought he had done something wrong.

No Unfavorable Inference from Exercise of Privilege

[This instruction will not be necessary if, as would probably often be the case, any privilege that a witness might invoke to avoid testifying has been resolved prior to trial and would not be claimed in the presence of the jury. But in the unlikely event that this has occurred, this instruction should be given.]

You have heard [a witness] assert that he does not have to testify about certain things on the basis of a privilege. [Describe privilege.] The law of evidence allows a witness to claim that privilege under these circumstances. Don't assume anything with respect to the use of the privilege, in particular what you think the answer to the question might have been. And don't assume anything about the credibility of the witness because of the use of that privilege.