United States District Court
Northern District of Indiana
Hammond Division

«Plaintiff»,

v.

«Defendant».

Civil Action No.: «Case_Number»

JURY TRIAL EXPLANATION FOR PRO SE PLAINTIFFS

The plaintiffs in this case are representing themselves. The court sets forth this explanation of trial procedures so that less time will be needed for such explanations at trial. This explanation is written for the plaintiffs, so "you" means the plaintiffs.

Trials are complicated. This explanation is meant to make the trial more understandable, but the judge can't make it less complicated. This explanation is not meant to teach you how to make a record for an appeal. It is meant to help you understand the trial procedures.

A. Trial Sequence

This is the order in which things will happen if the trial goes all the way from start to finish:

1. Jury selection
2. Preliminary instructions (in which the judge tells the jury what the case is about, and how the trial will proceed)
3. Opening statements
4. Your case in chief (your witnesses—including you—and your exhibits)
5. Motion for judgment as a matter of law, or for directed verdict
6. Defense case in chief

7. Final instructions conference
8. Final instructions from judge to jury
9. Final arguments
10. Jury deliberations
11. Verdict.

B. Role of the Judge

The judge cannot act as your attorney. The judge will do his best to assure that the trial proceeds in an orderly manner, and that you (as well as the defense) have as full an opportunity to be heard as the rules of procedure and evidence allow. But the judge will not advise you as to how to proceed, or what topics to cover while testifying, or what questions to ask witnesses.

The judge will conduct the trial under the Federal Rules of Civil Procedure and the Federal Rules of Evidence. No one can predict in advance exactly which rules will come into play, but some of the rules that most frequently come into play in cases such as this one are attached to this order. The judge is required to follow these rules, and so are the trial participants, including you.

C. Behavior in Court

You have the right to your day in court on this case, but that right can be lost by bad behavior. The judge will treat you politely and with courtesy in court and expects you to treat others in court the same way. The judge and the people who work in the court will do all they can to be sure the case goes smoothly and that you are able to have your day in court, but their main job is to be sure that the jury can do its job. In most cases, there is no problem, but once in a long while a plaintiff's behavior is such that the jury can't do its job. When that happens, the judge dismisses the case.

D. Arranging for Witnesses

Do not wait until the trial to arrange your witnesses. The judge will not delay the trial to let you arrange for witnesses that you could have arranged for earlier. You should start arranging your witnesses right after the final pretrial conference.

(1) *Subpoenas*

To subpoena a witness, you must pay the witness a witness fee of $40 plus mileage to and from the courthouse. The fee for mileage is set by federal law and changes from time to time; it is more than 30 cents per mile. You have to pay witness fees even if you filed your case *in forma pauperis*. The court does not have the power to order a witness to give up the statutory witness fee. To have a subpoena issued if you are a prisoner, you must provide the clerk's office with the name and address of the witness along with the witness fee, and the United States Marshal will try to serve the subpoena. If you are not a prisoner, you must serve the subpoena (together with the witness fee) yourself. You should remember that the people you sued are not required by law to attend the trial just because they were sued. They might attend, but unless you serve a legal subpoena (which includes the witness fee), they don't have to.

(a) *Inmate Witnesses*

You don't have to serve a subpoena, or pay a witness fee, for a witness who is in custody. If you want the testimony of a prisoner, you must ask the judge to issue an order to have the prisoner produced. You must make this request several weeks before trial, so the necessary arrangements can be made. You must tell the judge the prisoner's name, the prisoner's DOC number if you have it (the wrong person might be produced if you don't have the DOC number, and the judge will not stop the trial for you if that happens), the institution where the prisoner may be found, and why you want that person. Don't expect the judge to order several prisoners produced to testify to the same thing. The judge can't order the production of a prisoner held in a state other than Indiana. If possible, the judge will arrange for the prisoner to testify by videoconferencing—that reduces cost, preserves security, and might let you call more prisoner-witnesses than if they all had to be brought to court.

E. Jury Selection

Anywhere from 15 to 22 prospective jurors will be called to the trial. The group of prospective jurors is called the *venire*. You and the lawyer for the defense will be given a random list of the prospective jurors' names. You will also be given copies of two-page questionnaires the prospective jurors fill out when they arrive in court. The clerk will collect the copies of the questionnaires back from you after the jury is selected.

The judge will select 8 jurors for trial and there will be no alternates. If any jurors are dismissed, the case will keep going forward so long as at least 6 jurors are present.

The prospective jurors will be seated in the courtroom alphabetically which will be consistent with your juror list. All members of the venire will introduce themselves with the help of some questions on a sheet the judge will provide. The judge will then question all the jurors both collectively and individually.

Once the judge has completed asking the voir dire questions, 8 names will be randomly drawn and these prospective jurors will be seated in the jury box. The judge will then allow you to ask follow-up questions to the prospective jurors who are seated in the box. Your follow-up questions must be true follow-ups to questions already asked or to questions in the jury questionnaire. Do not repeat questions already asked and direct questions to a specific juror. You may not try your case through your questions or present argument.

Once you are finished with the follow-up questions, you will come to the side bar and give your challenges for cause.

Thereafter, you will alternatively strike your preemptive challenges with plaintiffs striking first.

You may not backstrike. You may strike jurors in any order, but once you have passed a juror and a new juror is called to replace the dismissed one, the remaining jurors may no longer be stricken.

The dismissed jurors' seats will be randomly filled, and the process will continue until you have asked all your follow-up questions and there are no further strikes or you are out of challenges.

A *cause challenge* is based on the belief that a particular person simply cannot be fair to both sides in that particular case. A person making a cause challenge generally must be able to point to something the prospective juror said or wrote as demonstrating that he or she can't be fair. You will have the chance to object to any cause challenge the defense makes, and the defense will have the chance to object to any cause challenge you make. The judge decides whether the person should be removed (meaning that the judge decides whether he is persuaded that the challenged person can't be fair). There is no limit on the number of cause challenges to be made.

A *peremptory challenge* is one that a party can make without stating a reason. You may excuse 0, 1, 2, or 3 people with peremptory challenges, but you can't excuse more than 3. The lawyer for the defense may excuse as many as 3 under this procedure, too. Reasons generally don't have to be stated for a peremptory challenge. *A peremptory challenge may not be based on the prospective juror's race, sex, or national origin*. If the lawyer for the defense says you have based a peremptory challenge on race, sex, or national origin, the judge may require you to state your reason for challenging that person. If you think the lawyer for the defense based a peremptory challenge on race, sex, or national origin, tell the judge.

This is how challenges will be exercised: After the venire has been excused from the courtroom, the judge will first ask you if you have any *cause challenges* to make. If you do, tell the judge which jurors you challenge, and why you think they can't be fair. The lawyer for the defense will have a chance to respond to your challenges, and also to make any cause challenges for the defense. You will have the chance to object to any cause challenges made by the lawyer for the defense, and the judge will rule.

The judge will then ask you for your *peremptory challenges.* You should write the names of the jurors that you want to strike and their seat numbers down on a piece a paper. The lawyer for the defense will do the same thing.

F. Opening Statement

After the jury is selected, the opening statements take place. In opening statements, you and the lawyer for the defendants have the chance to tell the jury what you expect the evidence to be. You can't argue what the jury should do. The time to do that is in final argument.

What you tell the jury in opening statement is not evidence. The evidence consists of witness testimony, exhibits received in evidence at trial, and any facts you and the lawyer for the defense formally agree to. The opening statement is not your testimony.

G. Your Case in Chief

After the opening statements, you may present your evidence. This is called the plaintiff's *case in chief*. Your case in chief may consist only of your testimony, or it may include testimony of other witnesses. If you have other witnesses, tell the judge the order in which you want to present your evidence: who will testify first, second, third, and so on. This will help keep the trial moving and keep the jury from getting bored while waiting in the jury room for everyone in the courtroom to be ready.

If you call a witness to testify, you must ask questions for the witness to answer. You can't tell the witness (or the jury) facts while the witness is testifying; the witness is to testify to facts in response to your questions. This is called *direct examination.* When you are done with your questioning of the witness, tell the judge. The judge then will let the lawyer for the defense ask questions of the witness. This is called *cross examination.* After the cross examination is done, the judge may allow you to ask more questions in what is called *redirect examination*, but those questions must be related to something discussed on cross examination. If you ask questions on redirect examination, the lawyer for the defense will be offered a chance to ask more questions on *recross examination*. No more questioning of that witness will be allowed after recross examination.

If you testify as a witness in this case, you won't have to ask questions of yourself. The judge will let you just tell the facts of the case, but you must tell the court when you are changing topics—for example, "Now I'm going to talk about when I saw the doctor"—so the lawyer for the defense will have an opportunity to object to a topic. Other than not having to ask questions

of yourself, your testimony will have to comply with all the other rules of evidence and procedure, which means there may be objections raised during your testimony. If the judge sustains an objection, he is ruling that you can't talk about whatever was objected to. If you don't understand what it is you're not allowed to talk about, ask the judge.

Let the judge know when you are done with your testimony. He will then ask the lawyer for the defense if there is any cross examination, and you might be cross examined by the other side. If so, you will be given a chance to give more testimony on redirect examination.

The judge *will not* remind you of topics to testify about. If he did that, he would be acting as your advocate. So if your case is about things that happened on a Monday and a Tuesday, and you only testify about Monday, the judge will not remind you to talk about Tuesday.

You should also remember that papers you may have filed with the court before trial are not evidence. If you want the jury to consider some paper, you have to list it as an exhibit in the pretrial order, and offer it into evidence at trial. To offer an exhibit into evidence, you might need a witness who can tell the jury what the exhibit is.

H. Motions for Judgment as a Matter of Law or Directed Verdict

When you have finished presenting your evidence, the lawyer for the defense may make a motion for judgment as a matter of law, or move for a directed verdict. These are two names for the same motion. The motion asks the judge to decide whether the law would let you win your case if the jury believes all your evidence. The judge will grant the motion if you did not present evidence on some fact you have to prove. The judge will grant the motion if your case doesn't amount to a constitutional violation. If the judge grants the motion, he will give you a chance to respond to the motion by explaining why you think your evidence is sufficient to allow a jury to decide for you.

I. Defense Case in Chief and Rebuttal

If the judge does not grant judgment as a matter of law to the defense, the lawyer for the defense will have a chance to call witnesses and present evidence. This is called the *defense's*

case in chief. You will have the chance to cross examine any witnesses called by the lawyer for the defense.

If something new is raised in the defense's case in chief, the judge may let you present more evidence on that new topic. This is called the *rebuttal* stage of the trial. If you want to present rebuttal evidence after the defense case in chief, ask the judge. You should know, though, that the judge probably will not allow the trial to be delayed to let you get rebuttal witnesses to court.

J. Final Instructions Conference

The final instructions conference is done with the jury out of the room, after or near the end of all the evidence. The judge will tell you and the lawyer for the defense, in writing, what instructions on the law he plans to give to the jury. The judge will give you a chance to object to what the judge plans to tell the jury about the law. The lawyer for the defense will have the chance to object, too. At the end of the final instructions conference, you will know what the judge will be telling the jury about the law.

K. Final Argument

After all the evidence is complete, you and the lawyer for the defense will be allowed to make final arguments. In final argument, you may comment on any evidence that was presented at trial, and may tell the jury what you think that evidence means. You are not allowed to tell the jury any new facts about the case during final argument—the evidence is over by this point. You may also tell the jury what you are asking them to do: if you are asking them for money damages, you should tell them that.

You will have a copy of the final instructions on the law that the judge will have read to the jury before the final arguments. You are free to tell the jury what the judge was saying in those instructions, and how that law supports your case. If you get the law wrong, the lawyer for the defense probably will object, and the judge may sustain the objection.

Since you have the job of convincing the jury, you will have the right to open the final arguments and to close them. This means that you will speak first, then the lawyer for the

defense will speak, and then you may speak again to respond to what the lawyer for the defense said. The judge will put a time limit on the final arguments.

ENTERED: «Date»

S/ Joseph S. Van Bokkelen
JOSEPH S. VAN BOKKELEN
UNITED STATES DISTRICT JUDGE

Rule 50. Judgment as a Matter of Law in a Jury Trial

(a) JUDGMENT AS A MATTER OF LAW.

(1) *In General*. If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) *Motion*. A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

Federal Rule of Evidence 401 ("Definition of Relevant Evidence")

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Federal Rule of Evidence 402 ("Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible")

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible.

Federal Rule of Evidence 403 ("Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time")

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or

by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.").

Federal Rule of Evidence 602 ("Lack of Personal Knowledge")

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.").

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) **General rule**.—For the purpose of attacking the character for truthfulness of a witness,
(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.
(b) **Time limit**.—Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.
(c) **Effect of pardon, annulment, or certificate of rehabilitation**.— Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment,

certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime that was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) **Juvenile adjudications**.—Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) **Pendency of appeal**.—The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Federal Rule of Evidence 611 ("Mode and Order of Interrogation and Presentation")

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading question.

Federal Rule of Evidence 701 ("Opinion Testimony by Lay Witnesses")

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Federal Rule of Evidence 801 ("Definitions")

The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if —

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or relationship, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the

conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

Federal Rule of Evidence 802 ("Hearsay Rule")

Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress.