

APPENDICES

Appendix 1. Sample preliminary instructions to the venire.

LADIES AND GENTLEMEN:

Good [morning] [afternoon] ladies and gentlemen:

You have been summoned here as prospective jurors.

Jury service is an honored tradition. From its beginning our country has relied on citizens to apply their collective wisdom, experience, and fact-finding abilities to decide disputes under the law.

I am Judge Arturo Baca. My bailiff, who will escort you and assist in communicating with the court, is Charles Decker. If you need anything during the trial the bailiff would be happy to help. The court reporter is Ellen Fort. This person makes a record of everything said in court.

This trial is expected to last three days. We will all do our best to move the case along, but delays will occur. During delays, I may be deciding legal questions in this case, or emergency matters in other cases.

The usual hours of trial will be from 9:00 a.m. to 4:30 p.m. with lunch and occasional rest breaks. Unless a different starting time is announced, please report to the jury room by 8:45 a.m. Do not come back into the courtroom until you are called by the bailiff.

The case which you are about to try is a civil case, not a criminal case. It is a lawsuit filed by Able Baker, who is the plaintiff, against C.D. Insurance Company, who is the defendant.

The plaintiff seeks compensation from the defendant for damages that plaintiff says were caused by Breach of Contract and by Bad Faith.

The plaintiff says that defendant denied payment of plaintiff's claim under the terms of a health insurance policy for reasonable medical treatment necessarily undergone by plaintiff. The plaintiff also says that defendant's failure to pay the claim was frivolous or unfounded and the result of defendant's failure to conduct a timely and fair investigation of the claim. The defendant denies that its failure to pay the claim was frivolous or unfounded. Defendant says that its investigation of the claim was timely and fair, and that the investigation showed that plaintiff's medical treatment was not reasonably necessary under the terms of the contract, but was excluded from coverage because it was experimental.

An erroneous or incorrect failure to pay a claim is a breach of contract. A frivolous or unfounded failure to pay a claim is a bad faith breach of the duty to act honestly in good faith in the performance of the insurance contract. The terms "frivolous or unfounded" mean an arbitrary or baseless refusal to pay, lacking support in the wording of the insurance policy or the circumstances surrounding the claim. An insurance company does not act in bad faith

by denying a claim for reasons which are reasonable, even though incorrect, under the terms of the policy. Please stand for the administration of your oath.

Do you and each of you solemnly swear or affirm that you will well and truly answer any and all questions asked of you by the court or by the lawyers about your qualifications to serve as a juror in this case?

You now will be asked questions by me and by the lawyers so we can select the jury for this case. Each of you is under oath and must truthfully answer the questions. The court will not permit improper questions. Your answers should be straightforward and complete. You must speak out so the court and the lawyers for both sides can clearly hear your answers. If you would prefer not to answer any particular question in front of other people, please say so, and we will address your concern privately.

We will select eight jurors to serve as the jury to hear this case. Two will be alternate jurors. We use alternates to avoid the time and expense of starting a new trial in the event one of you becomes sick or has an emergency. Six jurors will participate in final deliberations.

I will begin the preliminary questions. After my questions, the attorneys for the parties may have further questions. If your answer is "yes" to any of these questions, please raise your hand until you are noticed. Also, if, at any time, you need to change or add to the answers you made to the written questionnaire, please raise your hand.

(The lawyers may now ask some questions.)

(To those selected.)

Please stand for the administration of your oath.

Do you and each of you solemnly swear or affirm that you will render a true verdict according to the law and evidence submitted?

Other examples of statements of the case

The foregoing example is for an insurance-bad-faith case. The following are other examples of statements, some being more detailed than others. No specific format is required.

Slip and fall

The plaintiff says that defendant failed to use ordinary care to keep its grocery store premises safe and that plaintiff slipped in a puddle of water, suffering injuries as a result. Defendant says that it did keep its premises safe and that despite reasonable inspections it was unaware that water had accumulated where plaintiff fell. Defendant also says that plaintiff failed to exercise ordinary care for his own safety when he stepped into the puddle and that any injuries he received are a result of his own negligence.

Automobile accident

The plaintiff says that he was injured in an auto collision at the Albuquerque intersection of Washington and Lomas on July 17 last year. He says that defendant was negligent and violated the law by failing to stop at a red light. Defendant denies that the light was red and says that plaintiff was negligent in failing to keep a proper lookout. Defendant also says that the City was negligent in placing a traffic control box on the northeast corner of the intersection that blocked his view of traffic coming from plaintiff's direction. And defendant says that plaintiff failed to exercise ordinary care to minimize or lessen his damages.

You will be required to apply certain legal definitions in deciding this case. For your guidance I am providing you with certain definitions at this time:

Duty of a driver

It is the duty of every operator of a vehicle to exercise ordinary care, at all times, to prevent an accident.

Ordinary care

"Ordinary care" is that care which a reasonably prudent person would use in the conduct of the person's own affairs. What constitutes "ordinary care" varies with the nature of what is being done. As the risk of danger that should reasonably be foreseen increases, the amount of care required also increases. In deciding whether ordinary care has been used, the conduct in question must be considered in the light of all the surrounding circumstances.

Negligence

The term "negligence" may relate either to an act or a failure to act. An act, to be "negligence," must be one which a reasonably prudent person would foresee as involving an unreasonable risk of injury to himself or to another and which such a person, in the exercise of ordinary care, would not do. A failure to act, to be "negligence," must be a failure to do an act which one is under a duty to do and which a reasonably prudent person, in the exercise of ordinary care, would do in order to prevent injury to himself or to another.

Violation of statute

There was a law in effect at the time of the occurrence that provided traffic shall stop when facing a red light. Violation of this law constitutes negligence as a matter of law unless you determine that such violation was excusable or justified.

Duty to keep a proper lookout

It is the duty of every operator of a vehicle, at all times, to keep a proper lookout so as to avoid placing the operator or others in danger and to prevent an accident. The duty to keep a proper lookout requires more than merely looking. It also requires a person to actually see

what is in plain sight or is obviously apparent to one under like or similar circumstances. Further, with respect to that which is not in plain sight or readily apparent, a person is required to appreciate and realize what is indicated by that which is in plain sight.

Mitigation of damages

An injured person must exercise ordinary care to minimize or lessen his damages. Damages caused by his failure to exercise such care cannot be recovered.

Medical negligence

The plaintiff says that defendant's diagnosis or treatment fell below the acceptable standard of care for doctors practicing under similar circumstances, and that plaintiff suffered injury and damages as a result. The defendant denies this, and says that if plaintiff has suffered any injury or damage, such resulted from negligence of hospital personnel or unavoidable medical complications.

Wrongful termination of employment

The plaintiff says that she was terminated from her employment with defendant for a reason prohibited by law, namely because she complained about unsafe working conditions to the State Occupational Health and Safety Bureau. The plaintiff seeks compensation for damages caused by the termination and for punitive damages. The defendant denies that it terminated the plaintiff because of her complaint, and says that plaintiff was terminated because of habitual tardiness and poor job performance.