

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

KENTUCKY NATIONAL INSURANCE COMPANY

PLAINTIFF

v.

CIVIL ACTION NO. 3:97CV-407-S

E.W. SCRIPPS COMPANY

DEFENDANT

**COURT'S INSTRUCTIONS TO THE JURY**

Members of the Jury:

Now that you have heard all of the evidence, and the argument of the attorneys, it is my duty to give you instructions as to the law applicable in this case.

It is your duty as jurors to follow the law as stated in the instructions, and to apply that law to the facts you find from the evidence.

You are not to single out one instruction alone as stating the law. You must consider the instructions as a whole.

You are not to be concerned with the wisdom of any rule of law stated by the Court. You must apply the law given in these instructions whether you agree with it or not.

This case should be considered and decided by you as an action between persons of equal standing in the community, holding the same or similar stations in life. A corporation is entitled to the same fair trial at your hands as an individual.

It is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record. It is your own interpretation and recollection of the evidence that controls.

Statements and arguments of counsel are not evidence in the case, except for the specific instances I advised you of with regard to admissions and interrogatories.

The court has taken judicial notice of certain facts or events. You will accept these as conclusive.

You are permitted to draw reasonable inferences, deductions, and conclusions from the testimony and exhibits which you feel are justified in the light of your own common sense.

In saying that you must consider all the evidence, I do not mean to suggest that you must necessarily accept all of the evidence as true or accurate. You are the sole judges of the credibility or believability of each witness, and the weight to be given to the testimony of each witness.

A witness who by education and experience has become expert in a science may state an opinion as to a matter in which he is versed and which is material to the case. You should consider this testimony and give it such weight as you, in the application of your common sense, think it deserves.

The weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact.

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of his claim by a preponderance of the evidence. If the proof should fail to establish any essential element of plaintiff's claim by a preponderance of the evidence in the case, the jury should find for the defendant.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. Evidence can be direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating the existence or non-existence of a fact. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

**I.**

The plaintiff, Kentucky National Insurance Company, claims that the defendant, E.W. Scripps Company, negligently installed cable television service at the Klinglesmith home prior to May 25, 1995.

In order for the plaintiff to recover, it is necessary that it prove by a preponderance of the evidence that the defendant did, prior to May 25, 1995, install cable television service to the Klinglesmith home. You will determine from the evidence whether or not the defendant did the installation and answer the interrogatory contained on Verdict Form A. If your answer to the question on Verdict Form A is "yes," you will proceed to the next instruction. If your answer to the question on Verdict Form A is "no," you will end your deliberations and return to the courtroom.

## II.

If you have found that the defendant did install cable television service at the Klinglesmith home before May 25, 1995, the court further instructs you as follows:

It was the duty of the defendant at the time it installed cable television service at the Klinglesmith home to exercise that degree of care which an ordinarily reasonable and prudent installer of cable television service would exercise under like or similar circumstances, and that duty included the specific duty to ground the cable television service cable at its entrance to the home. If you find that the defendant violated its duty as stated, and that such failure was a substantial factor in causing the fire and subsequent damage to the Klinglesmith home, then you will find for the plaintiff, Kentucky National Insurance Company, on Verdict Form B. Otherwise, you will find for the defendant, E.W. Scripps Company, on Verdict Form B.

If you believe that there existed evidence at the fire scene or otherwise at the Klinglesmith home that the agents or employees of the plaintiff or the Klinglesmiths were aware of but allowed to be destroyed or disposed of without making reasonable efforts to preserve it, you may, but are not required to, infer that this evidence would be, if available, adverse to the plaintiff and favorable to the defendant.

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will speak for you here in court.

Forms of verdict have been prepared for your convenience.

You will take these forms to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the forms which set forth the verdict upon which you unanimously agree with respect to each issue in this case; you will then return with your verdict to the courtroom.