

1.11 PRELIMINARY CHARGE (Approved 11/98, Revised 5/07)

[To be given after the jury is sworn in but before the openings.]

Members of the Jury:

Before we begin, I have a few preliminary instructions for you.

A. Role of Jury, Judge and Attorneys

As the jury in this case, you will be the judges of the facts and you will be the only judges of the facts. You will have to decide what happened. I play no part in judging the facts. That is your responsibility. My role is to be the judge of the law, that is to say, I make whatever legal decisions have to be made during the course of the trial, and I will explain to you the legal principles that must guide you in your decisions on the facts. You are to judge the facts in this case based upon the evidence presented to you and based only on the evidence. This evidence will consist of the testimony of witnesses, the exhibits marked into evidence and any material that we read to you.

As the trier of fact, it will be your job to judge the believability of the witnesses. Size up the witness. Is the witness telling the truth? Does the witness know what he/she is talking about? How good is the witness's recollection? Is the witness accurate and correct in what he/she is saying? You may also consider the demeanor of

the witness, that is, how is the witness behaving and responding to the questions asked. You may believe part of the witness's testimony and not believe other parts of it.

During the trial, I will be required to rule on the admission or rejection of evidence. You are to give no consideration to any evidence that I rule to be inadmissible and you are not to speculate or guess about what that evidence might have been or what it might have meant.

Do not infer from any rulings I make in this case or anything I say what my feelings might be about the outcome of this case. Even if you knew what my feelings were, you should disregard them, because it is your decisions on the facts that control, not mine.

At the close of the entire case, I will explain to you the law, which applies to this case. You must accept the law as I explain it to you and apply it to the facts as you find them to be based on the evidence.

During the course of the trial, you will hear from the attorneys on numerous occasions. Always bear in mind that the attorneys are not witnesses and what they say is not evidence in the case, whether they are arguing, objecting or asking questions. The attorneys are here as advocates and spokespersons for their clients' positions.