

INFORMATION and GUIDELINES

for Civil Practice before

The Honorable Janet T. Neff
United States District Judge

United States District Court
for the Western District of Michigan

Honorable Janet T. Neff
401 Ford Federal Building
110 Michigan St., N.W.
Grand Rapids, MI 49503-2363

Revised: August 2020

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DIRECTORY

HONORABLE JANET T. NEFF
United States District Judge

United States District Court
401 Ford Federal Building
110 Michigan St., N.W.
Grand Rapids, MI 49503-2363
Telephone: (616) 456-6774

Judicial Assistant - Christine Bockheim
Email: chris_bockheim@miwd.uscourts.gov
Telephone: (616) 456-6774

Case Manager - Rick Wolters
Email: rick_wolters@miwd.uscourts.gov
Telephone: (616) 732-2746

Law Clerks - Kathleen Geiger
Rita Buitendorp

Court Reporter - Paul Brandell
Email: paul_brandell@miwd.uscourts.gov
Telephone: (517) 230-7507

United States District Court Clerk's Office
Thomas L. Dorwin, Clerk of Court
399 Ford Federal Building
110 Michigan St., N.W.
Grand Rapids, MI 49503-2363
Telephone: (616) 456-2381
Electronic Filing Help Desk: (616) 456-2206
(800) 290-2742

I. Calendar

The Case Manager is in charge of all calendar matters. All proceedings are set according to the Court's schedule. If you need a scheduling change, you must first reach agreement with opposing counsel and then contact the Case Manager. It is incumbent upon the party requesting a change to notify the opposing party of the request and, if granted, the new date. Judge Neff's Case Manager, Rick Wolters, may be contacted by calling (616) 732-2746 or by emailing rick_wolters@miwd.uscourts.gov. In situations where an opposing attorney will not consent to the proposed change, the party requesting it should submit a CM/ECF filing, stating reasons for the change.

Do not contact the Judge or her law clerks to request a scheduling change.

II. Alternative Dispute Resolution

In the interest of conserving judicial resources, this Court will require the parties to participate in some form of Alternative Dispute Resolution. Voluntary Facilitative Mediation is encouraged, but the parties are free to consider other methods as permitted by W.D. Mich. LCivR 16.2. At a minimum, the Court will schedule a settlement conference before a magistrate judge prior to the final pretrial conference. The parties are under an ongoing obligation to engage in good faith settlement negotiations.

III. Motions

A. Dispositive

1. Pre-Motion Conference

- a. **A pre-motion conference with the Court is required before filing any dispositive motion**, except no pre-motion conference is required before filing a post-trial motion, a bankruptcy appeal, or a dispositive motion in a case referred to a magistrate judge. *See* W.D. Mich. LCivR 7.2(a). If a motion for injunctive relief requires immediate consideration without a pre-motion conference, contact the Case Manager. Immediate decision WILL NOT be granted unless the movant provides an adequate basis in their motion papers.
- b. To arrange a pre-motion conference, the movant shall file a Pre-Motion Conference Request, not to exceed three (3) pages, with a brief substantive description of the grounds for such motion. Each party served with a Pre-Motion Conference Request must file a Response to Pre-Motion Conference Request within seven (7) days; the response shall not exceed three (3) pages. The response must state the substantive grounds, if any, for opposing the proposed motion. Opposition to requests for a pre-

motion conference will not be considered. The attorneys handling the matter for trial are required to be present at the pre-motion conference.

- c. The Court will determine a motion briefing schedule or other appropriate course of action at the pre-motion conference.
 - d. In cases in which the party requests a pre-motion conference to file a dispositive motion before filing its answer, the party shall, at the time of filing its Pre-Motion Conference Request, separately move for an extension of time to file its responsive pleading.
2. Joint Statement of Material Facts and Joint Exhibits for Summary Judgment Motions
- a. Upon any motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, the parties shall confer and file a Joint Statement of Material Facts, setting forth in numbered paragraphs, separate, short and concise statements of the material facts that are not in dispute. Citations to the record shall be included as appropriate for each paragraph. A key purpose of the Joint Statement is to establish a nonargumentative foundation of the core material facts for the issues presented. The Joint Statement shall be filed as a separate document on CM/ECF.
 - b. To the extent the parties rely on additional material facts to support their arguments, those facts shall be concisely set forth in their respective motion briefs, and must include citations to the record.
 - c. The parties shall collaborate to file joint exhibits where possible.
3. Filing of Dispositive Motion Papers
- a. **No motion papers shall be filed until the motion has been fully briefed.**
 - b. The movant must serve each party on or before the briefing schedule due date with a hard copy of the motion, all supporting papers, and a cover letter stating whom the movant represents and which documents are attached. A copy of the proof of service only shall be filed by means of the Court's CM/ECF system.
 - c. Opposing parties must serve the movant on or before the briefing schedule due date with a copy of their response papers. A copy of the proof of service only shall be filed by means of the Court's CM/ECF system.
 - d. Any further motion papers shall be served in the above manner on or before the due date. A copy of the proof of service only shall be filed by means of the Court's CM/ECF system.

- e. **Each party is responsible for filing its motion papers via CM/ECF on the day the motion is fully briefed, with the moving party first filing the motion. Once the moving party has filed the motion, response and reply documents may be electronically filed.** The movant shall also provide Chambers with a full set of courtesy hard copies of the motion papers with the document headers displayed at the top of every page together with a cover letter specifying each document in the package. Any exhibits must be properly tabbed and all papers placed in a three-ring binder.
4. Dispositive motions must adhere to W.D. Mich. LCivR 7.2. If dispositive motions are based on supporting documents such as depositions or answers to interrogatories, then only those excerpts that are relevant to the motion shall be filed.
5. Oral argument may be requested pursuant to W.D. Mich LCivR 7.2(d). The Court may schedule oral argument or may, in its discretion, dispose of the motion without argument at the end of the briefing schedule.
6. In cases where counsel wishes to project evidence on the monitors in the courtroom, projection of exhibits is accomplished by using the electronic evidence presentation equipment in the courtroom. The evidence presentation allows for the projection of evidence on various monitors located at the witness stand, the lectern, the jury box, and the counsel tables. This technology eliminates the cumbersome process of handling paper evidence and its use is strongly encouraged. Counsel planning to use the equipment are required to contact the Court's IT department well in advance of their court proceeding to inquire about equipment, training and practice sessions. Practice sessions and testing of the equipment must occur prior to the day of a scheduled court appearance. You may contact the Court's IT department by sending an e-mail to courttech@miwd.uscourts.gov or by calling (616) 456-2523. Information concerning the features of the system are available at the court's website: www.miwd.uscourts.gov (click on *Judges' Info/Judge Janet T. Neff/Courtroom Technology* tab). *Counsel is also required to notify Chambers – in advance of the hearing – of their intentions to use technology resources in the courtroom and coordinate the date and time of any practice sessions with Chambers.*

B. Non-Dispositive

Non-dispositive motions shall be filed in accordance with W.D. Mich. LCivR 7.3. They will usually be referred to a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A). In accordance with 28 U.S.C. § 471 *et seq.*, it is the policy of this Court to prohibit the consideration of non-dispositive motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion. *See* W.D. Mich. LCivR 7.1(d).

IV. Ex Parte Applications

Ex parte applications are disfavored and should be avoided except in the most extreme circumstances. Where such rare cases arise, the party submitting the application must state in the application that opposing counsel has been contacted in an attempt to resolve the situation through normal motion practice and why such an option is unsatisfactory, or, why contacting the opposing party would be inappropriate under the circumstances. W.D. Mich. LCivR 7.1(d). Applications for temporary restraining orders must comply strictly with the specific requirements of Fed. R. Civ. P. 65.

V. Orders

All proposed orders should be filed by means of the Court's CM/ECF system. Unopposed motions should include a proposed order.

If the Court has instructed a prevailing party to submit an order, then the prevailing party must have the proposed order approved by opposing counsel before it is submitted to the Court for the Judge's signature. In the event of a disagreement as to the form of an order, the prevailing party may bring a motion to settle the order.

Whenever a motion to settle an order is made, costs and attorney's fees will be awarded against an attorney who unreasonably withholds consent as to form.

VI. Transcripts of Court Proceedings

If a transcript of a court proceeding is desired, Judge Neff's Court Reporter, Paul Brandell, should be contacted directly by e-mail at paul_brandell@miwd.uscourts.gov or by telephone at (517) 230-7507.

VII. Stipulations

All stipulations should be submitted by electronic filing for the judge's approval with a proposed order, or the stipulation itself can include the phrase "IT IS SO ORDERED" with a place for the judge's signature and date.

VIII. Final Pretrial Conference

A. Matters to be Addressed

1. At the final pretrial conference, the parties and the Court will formulate a plan for trial, including facilitating the admission of evidence; consider the prospects of settlement; and consider such other matters as may aid in the trial or other disposition of the action, including:
 - a. Jury Selection Procedure, and
 - b. Jury Instructions.
2. Unless excused upon a showing of good cause, the attorney who is to conduct the trial shall attend the pretrial conference and shall come with full authority to act in all respects, or shall be accompanied by a representative of the party with such authority.

B. Submissions

1. At least **seven (7) days** prior to the final pretrial conference, counsel shall file:
 - a. Trial briefs.
 - b. A joint statement of the case and statement of the elements of the claims. Unless the case is very complex, the joint statement of the case should not exceed one paragraph. If the parties are unable to agree on the language of a joint statement of the case, then separate, concise, non-argumentative statements shall be filed. The purpose of the joint statement of the case is to summarize the nature of the case. [In a jury trial, the statement(s) of the case will be read to the prospective jurors during jury selection. The elements of the claims will be included in the preliminary jury instructions.]
 - c. Proposed voir dire questions in jury trials. The Court will conduct voir dire, taking into account questions proposed by the attorneys that have been submitted for review before the final pretrial conference. Counsel is advised to review the standard voir dire questions posed by the Court as stated in Attachment 2. Counsel

should submit only voir dire questions not included in this Court's standard voir dire questions. Attorneys may be permitted limited additional voir dire.

2. The parties are required to submit a copy of the joint statement of the case and statement of the elements of the claims, and proposed voir dire questions in jury trials in an editable word processing format by e-mail to Judge Neff's Judicial Assistant, Christine Bockheim at chris_bockheim@miwd.uscourts.gov.

C. Preparation of Order

Unless directed otherwise by this Court, a proposed pretrial order, entitled "Final Pretrial Order," shall be prepared jointly by counsel and filed by means of the Court's CM/ECF system **seven (7) days** prior to the final pretrial conference in the following form:

A final pretrial conference was held on the ____ day of _____. Appearing for the parties as counsel were:

(List the counsel who will attend the final pretrial conference.)

1. Exhibits: The following exhibits will be offered by the plaintiff and the defendant:

(List jointly [JT EX __] all exhibits, including demonstrative evidence and summaries of other evidence. Exhibits expected to be used solely for impeachment purposes need not be identified until trial. The exhibits shall be identified on a form similar to Attachment 1, attached to these Guidelines. The complete list of exhibits on a form similar to Attachment 1 must be produced at the final pretrial conference. Failure to list an exhibit required to be listed by this order will result, except upon a showing of good cause, in a determination of non-admissibility at trial. Where the parties are unable to agree on the inclusion of an exhibit, plaintiff shall use numbers [1-99]; defendant shall use letters [A-Z]. Indicate with respect to each exhibit whether and for what reason its admissibility is objected to. Objections not contained in the Pretrial Order, other than objections under Evidence Rule 402 or 403, shall be deemed waived except for good cause shown. *See* Fed. R. Civ. P. 26(a)(3).)

2. Uncontroverted Facts: The parties have agreed that the following may be accepted as established facts:

(State in detail all uncontroverted facts.)

3. Controverted Facts and Unresolved Issues: The factual issues remaining to be determined and issues of law for the Court's determination are:

(Set out each issue that is genuinely controverted, including issues on the merits and other matters that should be drawn to the Court's attention.)

4. Witnesses:

- a. Non-expert witnesses to be called by the plaintiff and defendant, except those who may be called for impeachment purposes only, are:

(List names, addresses, and telephone numbers of all non-experts who will testify. Indicate whether they are expected to testify in person, by deposition videotape, or by reading of their deposition transcript. Indicate all objections to the anticipated testimony of each non-expert witness. For each witness listed, indicate whether the witness **will be** called or merely **may be** called to testify.)

- b. Expert witnesses to be called by the plaintiff and defendant, except those who may be called for impeachment purposes only, are:

(List names, addresses, and telephone numbers of all experts who will testify, providing a brief summary of their qualifications and a statement of the scientific, technical or medical field(s) in which they are offered as experts. Indicate whether they will testify in person, by deposition videotape, or by reading of their deposition transcript. Indicate all objections to the qualifications or anticipated testimony of each expert witness.)

- c. It is understood that, except upon a showing of good cause, no witness whose name and address does not appear in the lists required by subsections (a) and (b) will be permitted to testify for any purpose, except impeachment, if the opposing party objects. Any objection to the use of a deposition under Fed. R. Civ. P. 32(a) not reflected in the Pretrial Order shall be deemed waived, except for good cause shown.

5. Depositions and Other Discovery Documents:

All depositions, answers to written interrogatories, and requests for admissions, or portions thereof, that are expected to be offered in evidence by the plaintiff and the defendant are:

(Designate portions of depositions by page and line number. Designate answers to interrogatories and requests for admissions by answer or request number. Designation need not be made of portions that may be used, if at all, as impeachment of an adverse party. Indicate any objections to proposed deposition testimony, answers to interrogatories, and admissions.)

6. Length of Trial: Counsel estimate the trial will last approximately _____ full days, allocated as follows: _____ days for plaintiff's case; _____ days for defendant's case; _____ days for other parties. In the event the Court imposes limits prior to the final pretrial conference, the parties' proposed pretrial order must include those limits.
7. Form of Alternative Dispute Resolution: The form of Alternative Dispute Resolution selected was _____. The outcome was unsuccessful for the following reasons: _____.
8. Prospects of Settlement: The current status of settlement negotiations is:
(Indicate persons present during negotiations, progress toward settlement and issues that are obstacles to settlement.)

The proposed Final Pretrial Order shall be signed by all counsel, signifying their acceptance. Upon approval by the Court, with such additions, deletions, or modifications as are necessary, the Final Pretrial Order will be entered.

IX. Trial

A. Courtroom Decorum

The purpose of this paragraph is to describe certain basic principles concerning courtroom behavior and decorum. The requirements stated in this rule are minimal, not all-inclusive, and are intended to emphasize and supplement, not supplant or limit, the ethical obligations of counsel under the Rules of Professional Conduct or the time honored customs of experienced trial counsel. These requirements apply to all counsel and all persons at counsel table.

1. This Court expects all attorneys and parties to act with courtesy and respect toward everyone in the courtroom. Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly detached from any ill feeling between the litigants or witnesses. Address all remarks to the Court, not to opposing counsel. Refer to all persons, including witnesses, other counsel and the parties, by their surnames and not by their first or given names.
2. Please be careful with the courtroom furniture. For example, do not put briefcases with metal feet on the tables.
3. Stand near the lectern while examining a witness and making statements to the jury, except that counsel may approach the clerk's desk or the witness for purposes of handling or tendering exhibits. The recording system picks up voices only when they are speaking into a microphone.

4. Offers of, or requests for, a stipulation should be made privately — not within the hearing of the jury.
5. Counsel shall admonish all persons at counsel table to refrain from making gestures, facial expressions, audible comments, and the like, as manifestations of approval or disapproval, during the testimony of witnesses or at any other time.
6. Cell phones or other electronic devices shall be in silent mode or turned off. The Court reserves the right to take appropriate action for violation of this policy.
7. Water is provided at counsel table and may be brought into the courtroom in appropriate containers. No other beverages are allowed.
8. Gum chewing and eating are prohibited in the courtroom. Remove hats when in the courtroom.

B. Daily Schedule and Time Frames

Trial begins at 8:30 a.m. and generally recesses between 3:30 - 4:00 p.m. There will be a break mid-morning and early afternoon and a lunch break. This schedule is subject to the other demands of the docket. Counsel must have enough witnesses to fill up the day.

C. Recesses

At each recess, outside the presence of the jury, counsel will be asked if there is anything that should be raised before the next session. Counsel may not be able to anticipate everything, but many matters should and will be taken up during the recesses.

D. Bench Trial

At least **seven (7) days prior** to trial the parties are required to submit a copy of the proposed findings of fact and conclusions of law. The above documents must be in an editable word processing format and sent by e-mail to Judge Neff's Judicial Assistant, Christine Bockheim at chris_bockheim@miwd.uscourts.gov and Judge Neff's law clerk to whom the case is assigned, either kathleen_geiger@miwd.uscourts.gov or rita_buitendorp@miwd.uscourts.gov.

E. Submissions for Jury Trial

1. The parties shall **jointly** file by means of the Court's CM/ECF system the following not later than **seven (7) days** prior to the trial:
 - a. Joint proposed jury instructions. The parties shall electronically file one joint set of instructions and shall make every reasonable effort to agree on the substantive instructions stating the elements of the claims and defenses. This

Court uses Western District of Michigan's Standardized Civil Jury Instructions for the preliminary and final instructions. A copy of these instructions is available on the Court's website (www.miwd.uscourts.gov) under For Attorneys/Civil Case Information. The Court generally uses O'Malley, Grenig & Lee's *Federal Jury Practice and Instructions* for those not covered in the standard set.

- (1) Each instruction shall be submitted in full text, one instruction per page, in the order in which you propose they be given to the jury.
- (2) For standard instructions with blanks or language in brackets, fill in the blanks and modify or delete the language, as applicable.
- (3) If you would like to change language on a standardized instruction, or submit additional instructions, you must indicate the source of the additional language or instruction.
- (4) Indicate objections, if any, to opposing counsel's proposed instructions, with a summary of the reasons and legal authority for each objection. Place each objection at the bottom of the specific instruction page. The parties must make every reasonable effort to agree on the substantive instructions stating the elements of the claim.

b. Joint proposed jury verdict form(s).

c. Counsel are required to submit exhibit lists and witness lists in an editable word processing format by email to Judge Neff's Judicial Assistant, Christine Bockheim at chris_bockheim@miwd.uscourts.gov and Judge Neff's Case Manager, Rick Wolters at rick_wolters@miwd.uscourts.gov.

2. In addition to being electronically filed, the parties are required to submit joint proposed jury instructions, and joint proposed verdict forms(s) in an editable word processing format by e-mail to Judge Neff's Judicial Assistant, Christine Bockheim at chris_bockheim@miwd.uscourts.gov and Judge Neff's Case Manager, Rick Wolters at rick_wolters@miwd.uscourts.gov.

F. Jury Selection

1. Counsel shall be present for an in-chambers conference one-half hour prior to the start of jury selection.
2. The Court will seat a jury of 8 members, and all jurors shall participate in the verdict subject to Fed. R. Civ. P. 47(c) and 48.

3. A jury will generally be selected as follows:
 - a. The courtroom clerk will call 8 people (by number) for the jury panel, and such persons will be seated in the order they are called.
 - b. The Court will conduct voir dire, taking into account questions proposed by the attorneys that have been submitted for review before the final pretrial conference. Attorneys may be permitted limited additional voir dire. The Court may sua sponte, in its discretion, excuse a juror for cause.
 - c. Attorney challenges for cause will be heard at side bar. The Court will excuse any prospective juror for cause where appropriate, replace the excused juror, and the process will be repeated.
 - d. When the Court has determined that none of the prospective jurors in the jury box should be dismissed for cause, the parties may exercise their peremptory challenges. *See* 28 U.S.C. §1870. Peremptory challenges will be exercised in writing away from the jury, and the Court will then excuse all peremptorily-challenged jurors.
 - (1) In the first round of challenges, plaintiff's counsel will exercise its peremptory challenges first and defense counsel second.
 - (2) The challenged jurors will be replaced, and the process repeated in the same manner except defense counsel will exercise its peremptory challenges first during the second and all subsequent even-numbered rounds.
 - (3) The process repeats itself until there is a jury. No backstrikes are permitted.
 - (4) In a case with multiple parties, the Court may allow additional peremptory challenges. *See* 28 U.S.C. §1870.

G. Witnesses

If a witness is not listed in the final pretrial order, then the Court will not allow either side to call the non-listed witness unless there is good cause shown. This, of course, does not apply to rebuttal witnesses. However, rebuttal experts must always be disclosed and listed in the final pretrial order.

H. Exhibits

1. **Five notebooks** with the exhibits shall be prepared before trial. The exhibits should be divided and tabbed with the exhibit numbers or letters. A list of the exhibits on a form similar to Exhibit 1 attached to these Guidelines should be located in the front of the notebooks. Two sets of notebooks shall be distributed to the Court, one set shall be

distributed to the jurors/witnesses, and there should be a set of notebooks to be used by each party or counsel for the parties. Counsel is responsible for ensuring the accuracy of the notebook ultimately provided to the jurors at the conclusion of trial. When bringing a document to the attention of the Court and witnesses, counsel asking the questions should refer to the notebook volume and exhibit number.

2. The exhibits shall be clearly identified. In cases where counsel wishes to publish the exhibits to the jury, counsel shall arrange to have all exhibits digitized for projection on the various monitors in the courtroom. Counsel planning to use the equipment are required to contact the Court's IT department well in advance of their court proceeding to inquire about the equipment, training and practice sessions. Practice sessions and testing of the equipment must occur prior to the day of a scheduled court appearance. You may contact the Court's IT department by sending an e-mail to courttech@miwd.uscourts.gov or by calling (616) 456-2523. Information concerning the features of the system are available at the court's website: www.miwd.uscourts.gov (click on *Judges' Info/Judge Janet T. Neff/Courtroom Technology* tab). *Counsel is also required to notify Chambers – in advance of the hearing – of its intentions to use technology resources in the courtroom and coordinate the date and time of any practice sessions with Chambers.*
3. If an exhibit has not been listed in the pretrial order, then it will not be admitted in the case-in-chief unless good cause is shown as to why it was not designated. All exhibits, charts, blow-ups, etc., must be shown to opposing counsel prior to the beginning of trial. Do not wait until the witness is on the stand to show these items to opposing counsel.
4. Offer joint exhibits into evidence on the first day of trial for admittance. Additional exhibits should be offered into evidence as soon as the foundation has been laid. Often, when counsel waits until the end of the examination or the case to make the offer, the witness has completely discussed the document during testimony and the document is not in evidence.
5. Offer exhibits that have identical foundation requirements in a group. It wastes time to lay a separate foundation on several identical kinds of documents, showing the witness one at a time. If they are all the same type of document, show the witness exhibits 1 through 10, ask the witness to identify the exhibits and lay a foundation (e.g., checking account statements of John Doe for the months January through June 2001). If the parties have stipulated to the admissibility of exhibits before trial, then those exhibits will be admitted as a group after opening statements and before the first witness is called. These stipulated exhibits can then be referenced without the necessity of establishing a foundation.

I. Deposition Designations and Motions in Limine

Deposition designations must be filed prior to the final pretrial conference. Counsel must confer in good faith to resolve the disputed motions in limine before filing. Motions in Limine must be filed

by the deadline set forth in the case management order. The Court will not entertain additional motions in limine or deposition designations unless good cause is shown.

ATTACHMENT 2 - STANDARD VOIR DIRE QUESTIONS

1. Do you have any health, hearing, vision or other special disability or problem that would make serving as a member of this jury difficult or impossible?
2. This trial is expected to take ___ days. Does that prospect present a scheduling problem for anyone?
3. Have you heard or read anything about this case?
4. Is there anything about the case itself that would make it difficult for you to be fair and impartial?
5. Do you know any of the attorneys or witnesses?
6. Will your relationship with anyone named preclude your participation on this jury?
7. Have you ever served as a juror in a criminal or civil case or as a member of a grand jury in either federal or state court?
8. Have you ever been involved, in any court, in a civil matter that concerned yourself, any member of your family, or a close friend either as a defendant, a witness, or a victim?
9. Do you have any training or employment in the legal field?
10. Do you understand that merely being sued does not mean defendant is liable?
11. In a civil case such as this, the jury decides whether the plaintiff has proven its case against each defendant. Is there anyone who, for religious, moral, ethical or other reasons, believes he or she could not perform this duty?
12. At the end of the trial, you will be given instructions on the law that applies to this case. Will you abide by the law and apply the law to the facts of this case? If any of my instructions are in conflict with your own beliefs or if you personally disagree with my instructions, will you set aside your own beliefs and agree to abide by the instructions as given?
13. Will you be able to render a verdict after all the evidence and testimony are before you, the lawyers have made their arguments, and I have instructed you on the law? Do any of you believe you would hesitate to return a verdict, either for the plaintiff or for the defense? That is, would you be able to decide?
14. Do you have any problem with the premise that an injured party can recover damages?

15. If you are selected to serve on the jury you will hear witness testimony and determine the credibility or believability of the witnesses. Does anyone believe they cannot do this?
16. Does any other matter occur to you as a reason why you could not sit as a fair and impartial juror?