

11/20/11

**IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
JACKSON COUNTY, FLORIDA
CIVIL DIVISION**

EMMON SMITH,

Plaintiff,

Case No. 09-719-CA

vs.

R.J. REYNOLDS TOBACCO COMPANY,

Defendant.

**PLAINTIFF, EMMON SMITH'S, PROPOSED
PRELIMINARY JURY INSTRUCTIONS**

The plaintiff, Emmon Smith, submits the following proposed preliminary jury instructions to comply with this Court's orders from the December 15, 2010 hearing.

By submitting these proposed preliminary jury instructions, Mr. Smith does not waive and expressly preserves all arguments and objections to the substance or process of the trial of this matter, as reflected in motions and proposed jury instructions filed with the Court. Mr. Smith reserves its right to submit additional instructions and to propose modifications to the instructions contained in this submission.

Respectfully submitted,



George R. Baise Jr.

Maria Rubio, Esq.
RATZAN & RUBIO
1450 Brickell Avenue, Suite 2600
Miami, Florida 33131

J.B. Harris, Esq.
J.B. HARRIS, P.A.
200 South Biscayne Boulevard, 54th
Floor
Miami, Florida 33131

John G. Crabtree
Florida Bar No. 886270
George R. Baise Jr.
Florida Bar No. 0111805
CRABTREE & ASSOCIATES, P.A.
240 Crandon Boulevard, Suite 234
Key Biscayne, Florida 33149
Telephone (305) 361-3770
Facsimile (305) 437-8118
jcrabtree@crabtreelaw.com
gbaise@crabtreelaw.com

Counsel for Mr. Smith

Certificate of Service

On December 30, 2010, I mailed and emailed a copy of these proposed preliminary instructions to the following attorneys:

Stephanie Parker, Esq.
Florida Bar No. 0688355
John M. Walker, Esq.
Florida Bar No. 0691021
JONES DAY
1420 Peachtree Street NE, Suite 800
Atlanta, Georgia 30309-3053
Telephone: (404) 521-3939
Facsimile: (404) 581-8330

Larry Hill, Esq.
Florida Bar No. 173908
MOORE, HILL &
WESTMORELAND, P.A.
220 West Garden Street
SunTrust Tower, 9th Floor
Pensacola, Florida 32502
Telephone: (850) 434-3541
Facsimile: (850) 435-7899



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**PLAINTIFF, EMMON SMITH'S, PROPOSED
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PRELIMINARY INSTRUCTION NO. 1

This is an action brought by Plaintiff, Emmon Smith. This case arises out of a class action lawsuit that was filed in 1994 and continued through the year 2006 known as the *Engle* class action. The Plaintiff claims that he is a member of that class action because his injury was caused by addiction to R.J. Reynolds cigarettes containing nicotine. R.J. Reynolds Tobacco Company denies that he was a member of the *Engle* class and further denies that his injury was caused by addiction to R.J. Reynolds cigarettes containing nicotine. The attorneys and I will now ask you questions to help us select jurors for this case. We want to know if some personal experience or special knowledge might influence your decision. We also want to know if your personal opinions might affect your decision. Please understand that these questions are not meant to embarrass you or to pry into your personal affairs.

People often have strong feelings that they may be reluctant to disclose, but you have sworn in this case to answer all questions truthfully and completely and you must do so. If you do not understand a question, raise your hand or ask for an explanation. Remaining silent when you have information to disclose is as much a violation of your oath as making a false statement. A violation of your oath to tell the whole truth would be very serious and could result in civil and criminal penalties against you.

AUTHORITY:

Final Jury Instruction No. 1, Martin v. R.J. Reynolds Tobacco Company, Escambia Cir. Case No. 2007-CA-2520

PRELIMINARY INSTRUCTION NO. 2

You have now been sworn as the jury to try this case. This is a civil case involving a disputed claim or claims between the parties. This is a personal injury action brought by Emmon Smith.

This case arises out of a class action lawsuit which was filed in 1994 and continued through the year 2006 known as the *Engle* class action. The Plaintiff claims that he was a member of that class action because his death was caused by addiction to R.J. Reynolds cigarettes containing nicotine. R.J. Reynolds Tobacco Company denies that he was a member of the *Engle* Class and further denies that his death was caused by addiction to R.J. Reynolds cigarettes containing nicotine.

Those claims and other matters will be explained to you in more detail later. By your verdict, you will decide the disputed issues of fact. I will decide the questions of law that arise during the trial, and before you retire to deliberate at the close of the trial, I will instruct you on the law that you are to follow and apply in reaching your verdict. In other words, it is your responsibility to determine the facts and to apply the law to those facts.

Thus, the function of the jury and the function of the judge are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.

Finally, before we begin the trial, I want to give you just a brief explanation of rules you must follow as the case proceeds.

You must pay close attention to the testimony and other evidence as it comes into the trial. However, you must avoid forming any final opinion or telling anyone else your views on the case until you begin your deliberations. This rule requires you to keep an open mind until you have heard all of the evidence and is designed to prevent you from influencing how your fellow jurors think until they have heard all of the evidence and had an opportunity to form their own opinions. The time and place for coming to your final opinions and speaking about them with your fellow jurors is during deliberations in the jury room, after all of the evidence has been presented, closing arguments have been made, and I have instructed you on the law. It is important that you hear all of the facts and that you hear the law and how to apply it before you start deciding anything.

It is the things you hear and see in this courtroom that matter in this trial. The law tells us that a juror can consider only the testimony and other evidence that all the other jurors have also heard and seen in the presence of the judge and the lawyers. Doing anything else is wrong and is against the law. That means that you must not do any work or investigation of your own about the case. You must not obtain on your own any information about the case or about anyone involved in the case, from any source whatsoever. This includes reading newspapers, watching television or using a computer, cell phone, the Internet, any electronic device, or any other means at all, to get information related to this case or the people and places involved in this case. This applies whether you are in the courthouse, at

home, or anywhere else. You must not visit places mentioned in the trial or use the internet to look at maps or pictures to see any place discussed during trial.

Do not provide any information about this case to anyone, including friends or family members. Do not let anyone, including the closest family members, make comments to you or ask questions about the trial. Jurors must not have discussions of any sort with friends or family members about the case or the people and places involved. So, do not let even the closest family members make comments to you or ask questions about the trial. In this age of electronic communication, I want to stress again that just as you must not talk about this case face-to-face, you must not talk about this case by using an electronic device. You must not use phones, computers or other electronic devices to communicate. Do not send or accept any messages related to this case or your jury service. Do not discuss this case or ask for advice by any means at all, including posting information on an Internet website, chat room or blog.

When we are in a recess, do not discuss anything about the trial or the case with each other or with anyone else. If attorneys approach you, don't speak with them. The law says they are to avoid contact with you. If an attorney will not look at you or speak to you, do not be offended or form a conclusion about that behavior. The attorney is not supposed to interact with jurors outside of the courtroom and is only following the rules. The attorney is not being impolite. If

an attorney or anyone else does try to speak with you or says something about the case in your presence, please inform the bailiff immediately.

Reaching a verdict is exclusively your job. I cannot participate in that decision in any way. You should not speculate about how I might evaluate the testimony of any witness or any other evidence in this case, and you should not think that I prefer one verdict over another. Therefore, in reaching your verdict, you should not consider anything that I say or do, except for my specific instructions to you.

Steps in trial.

Before proceeding further, it will be helpful for you to understand how a trial is conducted. In a few moments, the attorneys for the parties will have an opportunity to make opening statements, in which they may explain to you the issues in the case and summarize the facts that they expect the evidence will show. Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be received as evidence.

After all the evidence has been received, the attorneys will again have an opportunity to address you and to make their final arguments. The statements that the attorneys now make and the arguments that they later make are not to be considered by you either as evidence in the case or as your instruction on the law. Nevertheless, these statements and arguments are intended to help you properly

understand the issues, the evidence, and the applicable law, so you should give them your close attention.

Following the final arguments by the attorneys, I will instruct you on the law.

AUTHORITY: *Florida Standard Jury Instructions in Civil Cases*, Instr. 202.2; *Final Jury Instruction No. 2, Martin v. R.J. Reynolds Tobacco Company*, Escambia Cir. Case No. 2007-CA-2520.

PRELIMINARY INSTRUCTION NO. 3

NOTE-TAKING BY JURORS

If you would like to take notes during the trial, you may do so. On the other hand, of course, you are not required to take notes if you do not want to. That will be left up to you individually.

You will be provided with a note pad and a pen for use if you wish to take notes. Any notes that you take will be for your personal use. However, you should not take them with you from the courtroom. During recesses, the bailiff will take possession of your notes and will return them to you when we reconvene. After you have completed your deliberations, the bailiff will deliver your notes to me. They will be destroyed. No one will ever read your notes.

If you take notes, do not get so involved in note-taking that you become distracted from the proceedings. Your notes should be used only as aids to your memory.

Whether or not you take notes, you should rely on your memory of the evidence and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than each juror's memory of the evidence.

AUTHORITY: *Florida Standard Jury Instructions in Civil Cases, Instr. 202.3.*

PRELIMINARY INSTRUCTION NO. 4

JUROR QUESTIONS

During the trial, you may have a question you think should be asked of a witness. If so, there is a procedure by which you may request that I ask the witness a question. After all the attorneys have completed their questioning of the witness, you should raise your hand if you have a question. I will then give you sufficient time to write the question on a piece of paper, fold it, and give it to the bailiff, who will pass it to me. You must not show your question to anyone or discuss it with anyone.

I will then review the question with the attorneys. Under our law, only certain evidence may be considered by a jury in determining a verdict. You are bound by the same rules of evidence that control the attorneys' questions. If I decide that the question may not be asked under our rules of evidence, I will tell you. Otherwise, I will direct the question to the witness. The attorneys may then ask follow-up questions if they wish. If there are additional questions from jurors, we will follow the same procedure again.

By providing this procedure, I do not mean to suggest that you must or should submit written questions for witnesses. In most cases, the lawyers will have asked the necessary questions.

AUTHORITY: *Florida Standard Jury Instructions in Civil Cases, Instr. 202.4.*