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# Federal Civil Practice

The newsletter of the Illinois State Bar Association's Section on Federal Civil Practice



## Binding Nonsignatories to Forum Selection Clauses

BY JEFFREY A. PARNESS

### Introduction

In September 2022, the fifth circuit, in *Franlink Inc. v. BACE Services*, 50 F. 4th 432 (2022), joined all other federal appellate courts in employing the "closely related" doctrine to determine whether a nonsignatory to a contract with a forum selection clause was bound by the clause. All other circuits had recognized the doctrine in some form.

The fifth circuit was "chary to create a circuit split," noting its reluctance to swim against the "tide of authority." But while the doctrine now generally operates nationally, its application seemingly will vary. The fifth circuit itself recognized the relevant factors had not been considered "holistically," with "no particular test emerging as definitive."

The doctrine will be reviewed herein, with an emphasis on how the Fifth and seventh circuit approaches to forum selection clauses vary and how practitioners should now approach nonsignatories.

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## Pattern Preliminary Civil Jury Instructions

BY IAIN D. JOHNSTON

The Seventh Amendment to the United States Constitution guarantees the right to a federal jury trial in nearly all civil cases involving common law claims.[1] Although this right has not been incorporated to the States through the Fourteenth Amendment's due process clause,[2] other than Louisiana and Wyoming, all States have a comparable right contained in their respective State constitutions.[3] So, obviously, Illinois' Constitution protects the right to a civil jury trial, too.[4] Compared to other countries—even countries with common law origins—this right is extremely unusual.[5] Despite the occasional grumbling by prospective jurors, collectively, we cherish the right to a jury trial for civil cases. Indeed, in these parts, Attorney Tim Mahoney emphasizes this right in his television commercials.

Implicit in the right to a civil jury trial is the belief—or hope—that the jury will be not only fair and impartial, but also properly informed on the law. Juries determine facts. They then apply

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## Binding Nonsignatories to Forum Selection Clauses

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First, the facts in *Franlink* will be described. Next, some of the varying approaches to the "closely related" doctrine will be explored. Finally, concluding remarks will focus on how practitioners can better secure or avoid the later use of the doctrine.

### The Facts in *Franlink*

Amy and Craig Wells entered into a franchise agreement with Franlink (Link) in 2007, which they renewed in 2017. The pact allowed the couple to operate a franchise staffing company, BACE Services, in Jacksonville, Florida. The franchise agreement created a fee-sharing arrangement and authorized BACE to use Link's trademarks and name. It specified several acceptable reasons for terminating the franchise and outlined post-termination obligations. The agreement also included a covenant not to compete and a nonsolicitation provision applicable to BACE, Craig, and Amy, who were all signatories to the agreement.

By November 2018, BACE had become unhappy with the arrangement and began to explore options for exiting. A ransomware attack in October 2019 on Link's system seemingly provided a reason. BACE sought to terminate its agreement with Link on October 25, 2019. Four days earlier, Bradley Morton—Amy's son and Craig's stepson, who had been a manager at BACE but not a signatory to the agreement—left BACE to become a branch manager at JTL, a competing staffing business operating in the same territory as BACE. Craig began soliciting Link's former BACE clients to join JTL on October 30, 2019.

Link soon learned of the JTL activities. Further, Link learned that Craig and Amy were also operating another competing staffing company, PayDay, and were diverting and soliciting former Link clients to it. This conduct led Link to formally terminate the agreement on November 6, 2019. Additionally, on November 14, 2019, Link sent a cease and desist letter to JTL, informing JTL of the BACE agreement. JTL refused to comply with the cease and desist demand, saying it was not a signatory.

On November 22, 2019, Link sued in the Southern District of Texas based on the forum selection provision of the agreement. It named BACE, Craig and Amy Wells, Morton, JTL, and PayDay—all nonTexas residents. Link sought injunctive relief and damages for the breach of contract, trademark infringement, unfair competition, tortious interference, and civil conspiracy. The non-signatories, Morton, JTL, and PayDay, moved to dismiss for lack of personal jurisdiction, arguing the agreement's forum selection clause did not apply to them and that without the clause, the court lacked jurisdiction. The court denied the motion, holding that the agreement's forum selection clause applied to the non-signatories because they were "so closely related" to the signatories that it was "foreseeable" they would be bound to the clause.

The district court thereafter conducted a four-day bench trial in August 2020. The contract had a jury trial waiver clause. The court granted Link's claims against the defendants. Specifically, it concluded that Craig, Amy, and Bradley operated the Link and PayDay businesses interchangeably, using the same employees, email addresses, and field staff. Additionally, they operated PayDay interchangeably with JTL. The court noted that Bradley, while working for JTL, had numerous contacts with former BACE clients, declaring JTL was a "continuation" of BACE's Link franchise. The court further concluded that JTL had conspired with BACE to operate a competing staffing company. Finally, the court found that Craig and Amy owned PayDay, a competing staffing company, which competed with Link.

The court awarded Link damages for the losses suffered due to breach of the contract. It also granted injunctive relief enforcing the noncompete and nonsolicitation provisions. Link then moved for attorneys' fees under the contract. The nonsignatories again objected that the provision did not apply to them because they were not signatories. The

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court awarded attorneys' fees, making all the defendants liable. The defendants appealed.

On appeal, the nonsignatories challenged personal jurisdiction. They argued that, as non-signatories, they were bound neither to the contract's forum selection clause nor to the jury trial waiver or attorneys' fees provisions.

## Approaches to Applying Closely Related Doctrine

As noted, the fifth circuit (somewhat reluctantly) adopted the "closely related" doctrine, while observing that some courts criticized it as "so vague as to be unworkable" and that some academics found it presented a due process problem in forcing a party to "litigate in a forum that would otherwise lack personal jurisdiction."

The fifth circuit held the doctrine could bind a nonsignatory to a forum selection clause where the nonsignatory is so "closely related" to the dispute that it is "foreseeable" that it will be bound. The doctrine, it said, was "context specific," reliant upon "a few fundamental factors," including "(1) common ownership between the signatory and the nonsignatory, (2) direct benefits obtained from the contract at issue, (3) knowledge of the agreement generally and (4) awareness of the forum selection clause particularly." The fifth circuit concluded Pay Day was bound to the franchise agreement," but Morton and JRL were not.

The fifth circuit formulated this holding though it found that "most courts have . . . applied the theory with little discussion or analysis." It did highlight the seventh circuit discussion in *Adams v. Raintree Vacation Exch., LLC*, 702 F.3d 436 (7th Cir. 2012), wherein the doctrine was deemed supported by a desire to prevent contracting parties from "using evasive, formalistic means . . . to escape contractual obligations" and to promote judicial efficiency (as all interested would be present). In *Adams*, the court focused on the need for "common ownership" and the importance of the agency concept of "secret principals."

The fifth circuit also highlighted the third circuit opinion in *McGraw-Hill Glob. Educ. Holdings LLC*, 909 F.3d 48 (3d Cir. 2018). That court focused chiefly on the nonsignatory's ownership of the signatory, its involvement in the contract negotiations, and its receipt of "direct benefits from the contract" at issue. As well, the third circuit determined the doctrine required the nonsignatory to have "an awareness of the clause, its contents, and that it might be defensively invoked."

## Securing or Avoiding Nonsignatories in Forum Selection Clauses

While both Morton and JTL were not bound, the fifth circuit suggested they may have been bound if the November 14, 2019 cease and desist letter mentioned the forum selection clause. Clearly, such a letter should mention the noncompetition and nonsolicitation provisions, as they would be relevant to certain later claims, like tortious interference and civil conspiracy. Yet even if the forum selection clause of the 2007 contract (renewed in 2017) was mentioned in the 2019 letter, why should it bind Morton and JTL (and the same with jury waiver and attorney's fees) under the fifth circuit factors? The seventh circuit's recognition of relevant public policies involving contract evasion, judicial efficiency and "secret principals" seem more pertinent to binding Morton to the forum selection clause. Under the fifth circuit analysis, a 2019 letter mentioning the clauses might only apply to claims arising after the date of the letter.

What might Link have done in 2007, 2017 or thereafter (as in October or November of 2019) to better secure the presence of nonsignatories acting with BACE, Amy and Craig in a later suit in Texas involving the undoing of the Link/BACE agreement? It could have placed in the franchise contract a requirement that the nonsolicitation, noncompetition, and forum clauses, among others, be revealed by BACE to its (high ranking) employees. Comparably, it could have secured a contractual duty on BACE, Amy and Craig to share the contract's contents with, and inform Link of, any person or entity with whom anyone of them engaged in a staffing nonLink enterprise in the area covered by the Link/BACE agreement. Finally, it could also have sent notices to its recent former clients of its desire to learn why their relationships with Link were ended, especially if Link suspected (but perhaps did not disclose) foul play.

What might BACE, Amy, Craig and PayDay have done to avoid litigating Florida-based claims in Texas? Given there was a binding forum selection clause, was 28 U.S.C. 1404 nevertheless available to them? It says: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." In *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972), the Court held that a "forum selection clause should control absent a strong showing that it should be set aside." It went on to note the party challenging the clause bears the burden to prove "enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching." So, beside the "closely related test" to determine forum clause application to nonsignatories, which the fifth circuit recognized had been criticized by lower courts as "so vague as to be unreasonable," a court may also need to reflect on the Section 1404(a) precedents on unreasonableness and injustice. Precedents have broadened *M/S Bremen*, as in *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22 (1988) (forum selection clause should be neither dispositive or disregarded; "flexible and multifaceted analysis" needed, as Congress intended). See also *In re Ryze Claims Solution, LLC*, 968 F.3d 701, 708 (7th Cir. 2020) (on adjusting 28 U.S.C. 1404(a) analysis when there is a valid forum selection clause). The precedents under 1404(a) on venue transfers where there would otherwise be "unreasonable and unjust" enforcement of a valid forum selection clause would perhaps have allowed BACE, Amy, Craig, and Morton to avoid a Texas trial. Yet these defendants might have preferred a Texas trial to one in Florida where the assets of JTL and Pay Day would also be on the line.

Regardless of party preferences, might the Texas court have considered, *sua sponte*, upon notice and hearing, transfer to a federal court in Florida? See, e.g., *Tazoe v. Airbus S.A.S.*, 631 F.3d 1321, 1336 (11th Cir. 2011) (long approved practice of *sua sponte* transfers under *forum non conveniens* doctrine).■

## Pattern Preliminary Civil Jury Instructions

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those factual determinations to the legal instructions given by judges.

But attorneys and judges spend years in their pursuit to understand the law and the legal system. And the vast majority of jurors are not attorneys. Indeed, like other possible "experts," attorneys are removed by their own kind during the jury selection process out of concern that attorneys may have undue influence on the other jurors.[6] Generally, jurors are laypeople who are usually unfamiliar with how the civil justice system truly works.[7]

One common way to familiarize the jury with the civil legal justice system generally and the task before it specifically is to provide the jury with preliminary instructions after the jury has been impaneled and sworn in. Federal Rule of Civil Procedure 51 authorizes district courts to provide preliminary jury instructions in civil cases.[8] Indeed, in 1985, federal judges in New York experimented with using preliminary instructions, garnering mixed results.[9] The American Bar Association has advocated for using preliminary jury instructions in civil cases for nearly two decades.[10] And, in 2008, the Seventh Circuit studied the use of preliminary jury instructions in civil cases, concluding that "[t]he procedure of the trial judge providing the jurors preliminary substantive jury instructions has the intended goal of increasing the jurors' understanding of the case by giving the jurors the legal framework for the parties' arguments regarding disputed facts."[11] As a result, the Seventh Circuit Commission strongly recommended the use of preliminary jury instructions in civil jury trials.[12]

Despite the Seventh Circuit Commission's findings and recommendations, surprisingly, the current Seventh Circuit pattern civil jury instructions do not provide preliminary instructions.[13] But the pattern *criminal* jury instructions *do* provide for preliminary instructions.[14] Currently, a subcommittee of the Seventh Circuit Pattern Civil Jury Instructions Committee is working on a draft of preliminary instructions to be used in civil cases. Unfortunately, a draft of these preliminary instructions will not be posted for public comment for months. And the adoption of these preliminary instructions is even further away.

In the meantime, counsel who rightfully believe that preliminary jury instructions for civil juries are useful can look to other sources to create instructions to propose to their respective trial judges—assuming the judges don't already have their own. Obviously, counsel can use the Seventh Circuit pattern preliminary *criminal* jury instructions as a guide with necessary modifications. Additionally, the Third,[15] Fifth,[16] Ninth,[17] and Eleventh[18] Circuits possess pattern preliminary instructions to be used in civil cases.

The common pattern preliminary civil jury instructions include the following:

- Role of the jury
- Conduct of the jury
- Process/outline of the trial
- Brief statement of the case, identifying the claims and defenses
- What is evidence/what is not evidence
- Prohibition on independent research
- Direct evidence/circumstantial evidence
- Burden of proof
- Determining credibility
- Impeachment by inconsistent statements
- Number of witness/all witnesses need not be called
- Ruling on objections
- Striking evidence
- Duty to follow instructions
- Taking notes
- Bench conferences/side bars
- Interaction with parties and attorneys
- Communications with the court

If certain forms of evidence will be used at a trial, preliminary instructions for those forms should be given. These include the following:

- Limited purpose evidence
- Use of interrogatories
- Use of deposition testimony
- Use of request for admission
- Expert/opinion testimony
- Charts/Summaries
- Demonstrative evidence
- Translated evidence

If a district judge allows jurors to ask questions, then a preliminary instruction as to the process of asking questions should also be given.

Attached at the end of this article is an Appendix with sample instructions to consider.

With the pandemic hopefully in the rearview mirror, the backlog of civil jury trials will need to be addressed by the parties, counsel, and courts. So, counsel should anticipate more civil jury trials for the foreseeable future. And, in those trials, the parties, counsel, and the courts should use preliminary jury instructions to educate juries, which will hopefully result in more accurate jury verdicts.

## Appendix

### Sample Pattern Preliminary Civil Pattern Jury Instructions

#### Role of the Jury

Now that you have been sworn, I have the following preliminary instructions for your guidance as jurors in this case.

You will hear the evidence, decide what the facts are, and then apply those facts to the law that I will give to you.

You and only you will be the judges of the facts. You will have to decide what happened. I play no part in judging the facts. You should not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be. My role is to be the judge of the law. 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. You must follow that law whether you agree with it or not.

#### Conduct of the Jury

Now, a few words about your conduct as

jurors.

First, I instruct you that during the trial and until you have heard all of the evidence and retired to the jury room to deliberate, you are not to discuss the case with anyone, not even among yourselves. If anyone should try to talk to you about the case, including a fellow juror, bring it to my attention promptly. There are good reasons for this ban on discussions, the most important being the need for you to keep an open mind throughout the presentation of evidence. I know that many of you use cell phones, smart phones [like Androids and iPhones], and other portable electronic devices; laptops, netbooks, and other computers both portable and fixed; and other tools of technology, to access the internet and to communicate with others. You also must not talk to anyone about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate orally with anyone about the case on your cell phone, smart phone, or portable or fixed computer or device of any kind; or use these devices to communicate electronically by messages or postings of any kind including e-mail, instant messages, text messages, text or instant messaging services [such as Twitter], or through any blog, website, internet chat room, or by way of any other social networking websites or services [including Facebook, LinkedIn, and YouTube].

Second, do not read or listen to anything related to this case that is not admitted into evidence. By that I mean, if there is a newspaper article or radio or television report relating to this case, do not read the article or watch or listen to the report. In addition, do not try to do any independent research or investigation on your own on matters relating to the case or this type of case. Do not do any research on the internet, for example. You are to decide the case upon the evidence presented at trial. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom.

Again, do not reach any conclusion on the claims [or defenses] until all of the evidence is in. Keep an open mind until you start your deliberations at the end of the case.

### Process/Outline of the Trial

The trial will proceed in the following manner:

First, attorney(s) for [plaintiff(s)] will make an opening statement to you. Next, attorney(s) for [defendant(s)] may make an opening statement. What is said in the opening statements is not evidence, but is simply an outline to help you understand what each party expects the evidence to show. [A party is not required to make an opening statement.]

After [Before] the attorneys have made their opening statements, [I will instruct you on the applicable law and] then each party is given an opportunity to present its evidence.

[Plaintiff] goes first because [plaintiff(s)] [has/have] the burden of proof. [Plaintiff(s)] will present witnesses whom counsel for [defendant(s)] may cross-examine, and [plaintiff(s)] may also present evidence. Following [plaintiffs'] case, [defendant(s)] may present evidence. Counsel for [plaintiff(s)] may cross-examine witnesses for the defense. [After the parties' main case is presented, they may be permitted to present what is called rebuttal evidence.]

After all the evidence has been presented, [I will instruct you on the law and then] the attorneys will present to you closing arguments to summarize and interpret the evidence in a way that is helpful to their clients' positions. As with opening statements, closing arguments are not evidence. [Once the closing arguments are completed, I will then instruct you on the law.] After that you will retire to the jury room to deliberate on your verdict in this case.

### Brief Statement of the Case, Identifying the Claims and Defenses

To help you follow the evidence, I will give you a brief summary of the positions of the parties:

The plaintiff asserts that [*plaintiff's claims*]. The plaintiff has the burden of proving these claims.

The defendant denies those claims [and also contends that [*defendant's counterclaims and/or affirmative defenses*]]. [The defendant has the burden of proof on these [*counterclaims and/or affirmative defenses.*]]

[The plaintiff denies [*defendant's counterclaims and/or affirmative defenses*].]

### What Is Evidence/What Is Not Evidence

The evidence from which you are to find the facts consists of the following:

1. The testimony of the witnesses;
2. Documents and other things received as exhibits;
3. Any facts that are stipulated--that is, formally agreed to by the parties; and
4. [Any facts that are judicially noticed--that is, facts I say you must accept as true even without other evidence.]

The following things are not evidence:

1. Statements, arguments, and questions of the lawyers for the parties in this case;
2. Objections by lawyers.
3. Any testimony I tell you to disregard; and
4. Anything you may see or hear about this case outside the courtroom.

You must make your decision based only on the evidence that you see and hear in court. Do not let rumors, suspicions, or anything else that you may see or hear outside of court influence your decision in any way.

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

### Prohibition on Independent Research

You, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in the case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source

outside the confines of this courtroom.

### Direct Evidence and Circumstantial Evidence

There are two types of evidence that you may use in reaching your verdict. One type of evidence is called "direct evidence." An example of "direct evidence" is when a witness testifies about something that the witness knows through his own senses — something the witness has seen, felt, touched or heard or did. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining. Another form of direct evidence is an exhibit where the fact to be proved is its existence or current condition.

The other type of evidence is circumstantial evidence. "Circumstantial evidence" is proof of one or more facts from which you could find another fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

You should consider both kinds of evidence that are presented to you. The law makes no distinction in the weight to be given to either direct or circumstantial evidence. You are to decide how much weight to give any evidence.

### Burden of Proof

[To be used if the claim or defense involves the preponderance of the evidence standard.]

When a party has the burden of proving any claim [or affirmative defense] by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim [or affirmative defense] is more probably true than not true.

[To be used if the claim or defense uses the clear and convincing evidence standard.]

When a party has the burden of proving any claim or defense by clear and convincing evidence, it means that the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.

You should base your decision on all of the evidence, regardless of which party presented it.

### Determining Credibility

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You are the sole judges of the credibility of the witnesses. "Credibility" means whether a witness is worthy of belief. You may believe everything a witness says or only part of it or none of it. In deciding what to believe, you may consider a number of factors, including the following:

(1) the opportunity and ability of the witness to see or hear or know the things the witness testifies to;

(2) the quality of the witness's understanding and memory;

(3) the witness's manner while testifying;

(4) whether the witness has an interest in the outcome of the case or any motive, bias or prejudice;

(5) whether the witness is contradicted by anything the witness said or wrote before trial or by other evidence;

(6) how reasonable the witness's testimony is when considered in the light of other evidence that you believe; and

(7) any other factors that bear on believability.

### Impeachment by Inconsistent Statements

You have heard evidence that before the trial, [a] witness[es] made [a] statement[s] that may be inconsistent with [his; their] testimony here in court. You may consider an inconsistent statement made before the trial [only] to help you decide how believable a witness' testimony was here in court. [If an earlier statement was made under oath, then you can also consider the earlier statement as evidence of the truth of whatever the witness said in the earlier statement.]

### Number of Witness/All Witnesses Need Not Be Called

The weight of the evidence to prove a fact does not necessarily depend on the number of witnesses who testify. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves.

### Ruling on Objections

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered, or the exhibit received. If I sustain the objection, the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer might have been.

### Striking Evidence

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore that evidence. That means when you are deciding the case, you must not consider the stricken evidence for any purpose.

### Duty to Follow Instructions

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against anyone You must follow the law as I explain it . even if you do not agree with the law and you must follow all of my instructions as a whole. You must not single out or disregard any of the instructions on the law.

### Taking Notes

You will be permitted to take notes during the trial. If you take notes, you may use them during deliberations to help you remember what happened during the trial. You should use your notes only as aids to your memory. The notes are not evidence. All of you should rely on your independent recollection of the evidence, and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impressions of each juror.

### Bench Conferences/Side Bars

During the trial it may be necessary for me to talk with the lawyers out of your hearing by having a bench conference. If that happens, please be patient.

We are not trying to keep important information from you. These conferences are necessary for me to fulfill my responsibility, which is to be sure that evidence is presented to you correctly under the law.

We will, of course, do what we can to keep the number and length of these conferences to a minimum. [While we meet, I will invite you to stand up and stretch and take a short break or perhaps even call a recess if it is a lengthy issue and permit you to go downstairs for a break.]

I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be.

### Interaction with Parties and Attorneys

If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator, or the like, remember it is because they are not supposed to talk or visit with you, either.

### Testimony Presented Through Interpreter

[Language(s) other than English] may be used during the trial. When that happens, you should consider only the evidence provided through the official interpreter. Although some of you may know [language(s) used], it is important for all jurors to consider the same evidence. For this reason, you must base your decision on the evidence presented in the English translation.■

1. U.S. Const. Amend. VII.
2. See Gasperini v. Ctr. For Humanities, 518 U.S. 415, 432 (1996).
3. Jay Tidmarsh, The English Fire Courts and the American Right to Civil Jury Trials, 83 U. Chi. L. Rev. 1893, 1895 n.8 (2016).
4. Ill. Const., art. I, §13.
5. Steven Glow Calabresi, James Lindgren, Hannah M. Begley, Kathryn L. Dore & Sarah E. Agudo, Individual Rights Under State Constitutions in 2018: What Rights are Deeply Rooted In A Modern Day Consensus of the States?, 94 Notre Dame L. Rev. 49, 115 (2018).
6. Shari Seidman Diamond, Mary R. Rose & Beth Murphy, The Civil Jury as a Political Institution Symposium: Embedded Experts on Real Juries: A Delicate Balance, 55 Wm. & Mary L. Rev. 885, 890 (2014).
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8. Fed. R. Civ. P. 51.
9. Leonard B. Sand & Steven Alan Reiss, A Report on Seven Experiments Conducted by District Court Judges in the Second Circuit, 60 N.Y.U. L. Rev. 423, 437-32 (1985).
10. Am. Bar Ass'n, Principles for Juries and Jury Trials princ. 6.C.1, at 29 (2005).
11. Seventh Circuit American Jury Project, Final Report, at 28 (Sept. 2008).
12. Id.
13. www.ca7.uscourts.gov/pattern-jury-instructions/7th_cir_civil_instructions.pdf/.
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15. https://www.ca3.uscourts.gov/model-civil-jury-table-contents-and-instructions.
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