IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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NOVOZYMES A/S and
NOVOZYMES NORTH AMERICA, INC.,

Plaintiffs,

v.

DANISCO A/S,
GENECOR INTERNATIONAL WISCONSIN, INC.,
DANISCO US INC. and DANISCO USA, INC.,

Defendants.

FINAL PRETRIAL
CONFERENCE ORDER

10-cv-251-bbc

- -

A final pretrial conference was held in this case on October 6, 2011, before United States District Judge Barbara B. Crabb. Plaintiffs appeared by David Tellekson, Virginia DeMarchi, Melanie Mayer and Allen Arntsen. Defendants appeared by William Dawson, Tracey Davies, Stephen Stout, Michael Valek and Kendall Harrison.

Counsel predicted that the case would take seven to eight days to try. The liability phase will be broken into two parts. The first part will concern the remaining infringement claims and invalidity based on enablement and the adequacy of the written description. If the jury finds for plaintiffs on both of their defenses, defendants will be allowed to present

their case for invalidity based on derivation in a second phase. The last phase will focus on damages.

Counsel understand that trial days will begin at 9:00 and will run until 5:30, with at least an hour for lunch, a short break in the morning and another in the afternoon.

Counsel agreed to the voir dire questions in the form distributed to them at the conference. The jury will consist of eight jurors to be selected from a qualified panel of fourteen. Each side will exercise three peremptory challenges against the panel. Before counsel give their opening statements, the court will give the jury introductory instructions on the way in which the trial will proceed and their responsibilities as jurors.

Counsel agreed that with the exception of experts, all witnesses would be sequestered. Counsel are either familiar with the court's visual presentation system or will make arrangements with the clerk for instruction on the system.

No later than noon on the Friday before trial, counsel shall meet to agree on any exhibits that either side wishes to use in opening statements. Any disputes over the use of exhibits are to be raised with the court before the start of opening statements. Also, no later than noon on the Friday before trial, plaintiffs' counsel will advise defendants' counsel of the witnesses plaintiffs will be calling on Monday and the order in which they will be called. Counsel should give similar advice at the end of each trial day; defendants' counsel shall have the same responsibility when defendants are putting on their case.

Counsel should use the microphones at all times and address the bench with all objections. If counsel need to consult with one another, they should ask for permission to do so. Only the lawyer questioning a particular witness may raise objections to questions put to the witness by the opposing party and argue the objection at any bench conference.

Counsel discussed the form of the verdict and the instructions on liability only briefly. Final decisions on the instructions and form of verdict for each phase of trial will be made at the instruction conference at the end of that phase.

Counsel are to prepare jury notebooks with copies of the relevant patents, a glossary of terms, the names of their witnesses (and a picture, if possible) and the credentials or curriculum vitae of each expert witness. After I read the introductory instructions to the jurors, I will give each of them a copy to add to their notebooks.

Counsel know that matters that have been kept under seal during the pendency of this case, including exhibits, will be disclosed to the public to the extent they are the subject of testimony. The jury will see all of the exhibits that are received in evidence but the exhibits themselves will not be part of this court's record; counsel are responsible for their own exhibits.

The parties do not agree on a common definition of a person of ordinary skill in the art relevant to this case and they do not agree on exactly what the relevant art is, that is, whether it is protein engineering or alpha amylase enzymes. If the parties cannot reach

agreement on these definitions, the jury will have to decide these issues.

The parties agree that plaintiffs' allegation of willfulness will not be mentioned until the damages phase of trial and then only if the court determines that grounds exist for arguing the allegation.

Plaintiffs object to defendants' calling Jack Rogers and Adam Monroe at trial; their objection is overruled. However, defendants will be limited in their questioning of these witnesses during plaintiffs' case in chief to those matters that plaintiffs covered in their questioning. If defendants want to question the witnesses about other matters, they will have to call them in their case. (Plaintiffs have assured the court that the two witnesses will be present for the entire week.)

Defendants may use deposition testimony of plaintiffs' witnesses who are present at trial only if the deposition used solely for impeachment purposes or if the witness /deponent is an officer, director, managing partner of plaintiffs or a Rule 30(b)(6) designee.

Although plaintiffs have presented defendants with a covenant not to sue on any products covered by claims 5, 8-13 and 15 of the '723 patent and argue that in light of the covenant, the court should not allow defendants to pursue any of their invalidity defenses against these claims. Because the covenant was not produced until shortly before the final pretrial conference and defendants have not had a chance to study it, we will have to take it up before trial on Monday, October 17, unless the parties reach agreement on the matter

before then.

Counsel are to work together to decide whether the jury should have a construction of the term *Bacillus stearothermophilus* alpha amylase or of *Bacillus licheniformis* or both and, if so, what those constructions should be.

The following rulings were made on the parties' motions in limine.

A. Plaintiffs' Motions

1. Motion to exclude derivation as an issue for trial - dkt. #509

This motion is denied, but, as explained above, derivation will be decided in a separate phase of the trial and only if the jury returns a verdict in favor plaintiffs on enablement and written description.

2. Motion to exclude evidence relating to U.S. Pat. No. 7,541,026 - Dkt. #510

This motion is DENIED with respect to the failed experiments that defendants performed because this evidence is relevant to showing that the written description was inadequate to allow others to practice the invention. However, defendants are not to refer to their '026 patent as the reason they undertook the experiments. The motion is GRANTED in all other respects, but only as to the first phase of the trial. If a second phase is necessary, defendants may raise this issue again.

3. Motion to exclude evidence relating to U.S. Pat. No. 7,498,158 and 6,410,295 -

dkt. #516

This motion is GRANTED in all respects.

4. Motion to exclude evidence relating to variants with alterations at unclaimed positions - dkt. #531 and to exclude evidence about plaintiffs' failure to do testing

a. Tests conducted of unclaimed variants in the specification

The motion is DENIED only as to those tests that were conducted under conditions similar to those described in specification. In all other respects it is GRANTED.

b. Evidence regarding plaintiffs' failure to do testing

This motion is DENIED.

5. Motion to exclude evidence about anticipation or obviousness of the "contribution" of the '723 patent - dkt. #515

This motion is GRANTED with respect to obviousness, anticipation and the "contribution" of the '723 patent. Defendants did not put obviousness into dispute; contribution to the art is irrelevant in and of itself; and their anticipation defense is unnecessary. If defendants show that the '723 patent is not enabled or is lacking a written description, the patent will be found invalid. At that point, it makes no difference if it is also anticipated by defendants' '026 patent.

6. Motion to exclude "irrelevant and prejudicial evidence" - dkt. #522

This motion is GRANTED with respect to the following evidence:

a. References to inequitable conduct

b. June 2009 Power Point presentation.

c. Low pH amylase Power Point presentation.

d. KAO Corporation research presentation.

e. Industry Strategy 2000 presentation.

f. Feb. 2008 Andersen email.

g. Documents related to plaintiffs' delay in pursuing claims at position 239.

h. Errors in examples 1 and 2 of the '723 patent.

i. Source of plaintiffs' samples of accused products.

j. Date plaintiffs hired counsel

k. Material withheld or redacted on privilege grounds.

l. Statements by counsel during these proceedings.

m. Previous rulings in case (with exception of rulings related to willfulness, which may be introduced during damages phase if plaintiffs are allowed to proceed on this claim).

n. Evidence of invalidity of other patents.

o. Whether plaintiffs practice '723 patent.

p. CTE global lawsuit.

q. Verenium acquisition (although it may be discussed during damages phase).

7. Motion to exclude certain expert testimony from Nancy J. Linck - dkt. #546

This motion is GRANTED as unopposed with respect to Linck's legal conclusions of opinions regarding infringement or invalidity and GRANTED regarding patent procedures. The Federal Judicial Center video will be shown, so it is unnecessary to have expert witness testimony on patent procedures.

B. Defendants' Motions in Limine

1. Motion to exclude expert testimony of Frances Arnold on the written description - dkt. #511

This motion is DENIED. Defendants' objections to Arnold's testimony are better handled through cross-examination.

2. Motion to exclude expert testimony of Julie Davis on lost profits related to collateral sales - dkt. #512

This motion is DENIED, subject to renewal after all the evidence is in.

3. Motion to exclude Dr. Arnold from testifying about the Larsen data; Dr. Davies from testifying about enablement or the written description and Dr. Davis from testifying about the percentage of customers who buy both alpha amylase and glucoamylase products- dkt. #518

This motion is GRANTED as Dr. Arnold's testimony about the Larsen data except

to rebut evidence introduced by defendants; it is DENIED as to Davies's opinions on enablement and adequacy of the written description and as to Davis's opinion about the percentage of customers who buy both products unless defendants can identify prejudice from the testimony.

4. Motion to exclude testimony of Scott Chambers - dkt. #518

This motion is GRANTED.

5. Motion to preclude Dr. Davies from testifying as to the rationale for the inclusion of the 17 positions not discussed in the examples in the '723 patent - dkt. #523

DENIED. It is proper for Davies to rely on prior art when assessing what a person of ordinary skill would have known in 2000.

6. Motion to preclude plaintiff from questioning experts as to opinions about issues no longer in the case - dkt. #527

This motion is GRANTED as unopposed.

7. Motion to preclude plaintiff from making any reference to U.S. Pat. No. 7,776,576 - dkt. #529

This motion is GRANTED as unopposed.

8. Motion to preclude evidence or argument that defendants copied information from plaintiffs' patent application - dkt. #532

This motion is GRANTED. The application that became the '158 patent is irrelevant,

as is the copying of information from that application.

9. Motion to exclude expert evidence or argument of damages other than lost profits or reasonable royalty - dkt. #533

This motion is GRANTED with respect to compensatory damages.

10. Motion to exclude evidence or argument "that separation of any quantity of cellular material from the accused products, regardless of their effect on recovery, results in an isolated variant as required by the claims" - dkt. #537

The parties have been asked to submit supplemental briefs on the construction of this term.

11. Motion to exclude evidence of damages from lost glucomylase sales - dkt. #538

This motion is DENIED for the reasons set out in connection with defendants' second motion in limine.

12. Motion to exclude evidence of tests of variants at postion 239 unless those tests were disclosed in plaintiff's response to interrogatory no. 5 - dk. #539

This motion is DENIED on the ground that defendants have shown no prejudice; they were able to depose the person who conducted the tests and have not suggested that they were unable to explore the matter fully at the deposition.

13. Motion to exclude evidence of the "underlying research" that led to the '952 application - dkt. #541

This motion is GRANTED. Plaintiffs have been successful in persuading the court that the relevant patent and application and underlying research are not proper subjects for trial; it would be improper for them to try to introduce that evidence at this point.

14. Motion to exclude evidence of any research on positions other than position 239 -dkt. #542

This motion is GRANTED as unopposed with one exception: plaintiffs may offer evidence of research leading up to the provisional application that became the '723 patent *if* the evidence has been disclosed to defendants

15. Motion to exclude evidence not produced in discovery - dkt. #543

This motion is DENIED as too vague; if defendants object to something in particular, they must raise their objection when plaintiffs try to introduce it.

16. Motion to exclude evidence of defendants' removal of the accused products from the market - dkt. #544

This motion is GRANTED as unopposed with respect to evidence that is offered for the purpose of proving liability by showing that defendants removed products from the market after May 10, 2010.

17. Motion to limit evidence related to prior Delaware litigation - dkt. #545

This motion is GRANTED. Plaintiffs' expert can testify that she worked for plaintiffs in other cases without identifying the result of the cases or saying that defendants were

involved. Plaintiffs' damages expert may rely on the Delaware court's determination of a reasonable royalty but is to identify it simply as a licence between the parties, not as something imposed or approved by the court.

18. Motion to exclude "any argument that [defendants'] use of Spezyme Ethyl in research and development violated an injunction or consent judgment in Delaware case - dkt. #549

This motion is GRANTED as unopposed.

19. Motion to preclude plaintiffs "from making any derogatory references about [defendants'] counsel - dkt. #550

This motion is GRANTED as unopposed.

20. Motion to exclude "any reference to unrelated legal proceedings involving [defendants] or DuPont and third parties - dkt. #551

This motion is GRANTED.

21. Motion to exclude evidence of DuPont's finances - dkt. #552

This motion is GRANTED as unopposed.

22. Motion to exclude evidence regarding the summary judgment rulings - dkt. #553

This motion is GRANTED as unopposed, with the exception that the court will instruct the jury that certain questions of infringement are no longer in dispute.

23. Motion to exclude evidence of past evidentiary rulings - dkt. #554

This motion is GRANTED.

24. Motion to preclude plaintiffs from "identifying the particular alterations present in the alpha amylase variant in defendants' non-infringing Spezyme RSL and Spezyme CL products" - dkt. #555

This motion is GRANTED. The parties are to work together on a means of avoiding disclosing the trade secrets in open court.

25. Motion to exclude evidence regarding certain patents and patent prosecution documents - dkt. #556

This motion is GRANTED unless plaintiffs can identify a permissible evidentiary purpose for the introduction of the other patents.

Entered this 11th day of October, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge

Voir Dire Questions
Novozymes A/S v. Danisco A/S; 10-cv-251-bbc

1. Statement of the case. Plaintiffs Novozymes A/S and Novozymes North America, Inc. and defendants Danisco A/S, Genencor International Wisconsin, Inc., Danisco US Inc., and Danisco USA Inc. manufacture and sell enzymes used in products such as ethanol. In this case, plaintiffs are contending that defendants are infringing a patent that plaintiffs own related to enzymes, that is, plaintiffs believe that defendants are making and selling a product that is covered by plaintiffs' patent. Defendants deny that they are infringing. In addition, they contend that plaintiffs' patent has no legal effect because it is invalid.

   Has any one of you ever heard of this case before today? How? When? When you heard about it, did you form any opinion concerning the case? Do you believe that your ability to serve impartially as a juror in this case has been affected by what you have heard about it?

2. The trial of this case will begin today and will last 8-9 days. Is there any one of you who would be unable to serve as a juror during this time?

3. Ask counsel to stand and tell the jury where they practice and with whom. Ask panel whether anyone knows counsel or their associates or partners.

4. Ask counsel to introduce the parties. Ask panel whether anyone knows any of the parties. (If any party is a corporation, have counsel identify the nature of the corporation's business, its major subsidiaries, or its parent corporation, and where it conducts business. Ask whether anyone on the panel is stockholder of corporation or has had business dealings with it.)

5. Do any of you know the following potential witnesses:

   a. Carsten Andersen?
   b. Frances Arnold?
   c. Edward Benatti?
   d. Victoria Brewster?

e. Gideon Davies?
f. Julie Davis?
g. Jeffrey Faller?
h. Hans Foerster?
i. Sura Hadi?
j. John Jarosz?
k. Elias Lambiris?
l. Signe Larsen?
m. Adam Monroe?
n. Scott Power?
o. Ronald Raines?
p. Sandra Ramer?
q. Cassidy Whitmore?

6. Question to each prospective juror.

Please stand up and tell us about yourself.

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse or domestic partner.

Any military service, including branch, rank and approximate date of discharge.

How far you went in school and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

7. Question to panel regarding prior experience with court proceedings:

   a. Have any of you ever been a party to a lawsuit? Describe circumstances.

   b. Have any of you ever been a witness in a lawsuit?

   c. How many of you have served previously on a jury?

   d. Of those of you who have sat on a jury, were you ever the foreperson on a jury? Describe your experience.

   e. Do any of you know any of the other persons on the jury panel?

8. Are any of you familiar with any products manufactured by plaintiffs or defendants?

9. Do any of you believe that inventors should *not* be allowed to obtain a patent that limits the rights of others to use the invention?

10. Have any of you ever invented anything or been involved in the development of a new product or process?

11. Have you or your employer obtained a patent or tried to do so?

12. Have you or your employer had any involvement with a patent lawsuit or other legal proceedings involving a patent?

13. Have any of you had any contact with the United States Patent and Trademark Office?

14. Do any of you have an employer that licenses its intellectual property or licenses intellectual property from other companies?

15. Do any of you have any knowledge, training or experience with patents that

was not covered by the previous questions?

16. Do any of you have knowledge, training or experience in any of the following areas:

    a. engineering, manufacture or testing of enzymes?

    b. protein engineering?

    c. biology?

    d. chemistry?

    e. agriculture?

    f. law?

    g. economics?

    h. accounting?

17. Do any of you frequently read the "science" or "technology" section in newspapers or magazines?

18. Do any of you have knowledge or experience with the production of ethanol or other biofuels?

19. Do any of you have an opinion, whether positive or negative, about adding ethanol to gasoline?

20. Question to panel. At the end of the case I will give you instructions that will govern your deliberations. You are required to follow those instructions, even if you do not agree with them. Is there any one of you who would be unable or unwilling to follow the instructions?

21. Question to panel. Do any of you have opinions, whether positive or negative,

about people who go to court to obtain relief for wrongs they believe they have suffered?

22. Question to panel. Do you know of any reason whatsoever why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

I. INTRODUCTORY INSTRUCTION

Members of the jury, we are about to begin the trial of the case. Before it begins, I will give you some instructions to help you understand how the trial will proceed, how you should evaluate the evidence, and how you should conduct yourselves during the trial.

The parties who begin the lawsuit are called the plaintiffs. In this action, the plaintiffs are Novozymes A/S and Novozymes North America, Inc. The parties against whom the suit is brought are called the defendants. In this action, the defendants are Danisco A/S, Genecor International Wisconsin, Inc.. Danisco U.S. Inc. and Danisco USA Inc.

As I have told you, this is a patent case. It involves U.S. Patent No. 7,713,723. Patents are often referred to by their last three digits. I will call the patent in this case the '723 patent.

The '723 patent relates to enzymes, known as alpha-amylases, that have been altered to make them more stable at high temperatures. During the trial, the parties will offer testimony to familiarize you with this technology.

Plaintiffs contend that defendants are infringing the '723 patent by making, using, selling, offering for sale and importing certain alpha-amylase products. Some claims of infringement were resolved before trial. The only question remaining for trial related to infringement is whether defendants' "whole broth" products meet all of the elements of the asserted claims. Defendants deny that the "whole broth" products are infringing. In addition, they contend that the '723 patent is invalid because the written description of the invention is inadequate and because the patent does not include sufficient instructions to enable a person of ordinary skill in the art to practice the invention.

After I finish giving you these instructions, we will watch a video that explains the basics of the U.S. patent system, the parts of a patent, and how a person obtains a patent.

The case will proceed as follows:

First, plaintiff's counsel will make an opening statement outlining plaintiff's case. Immediately after plaintiff's statement, defendants' counsel will also make an opening statement outlining defendants' case. What is said in opening statements is not evidence; it is simply a guide to help you understand what each party expects the evidence to show.

Second, after the opening statements, the plaintiff will introduce evidence in support of his claim. At the conclusion of the plaintiff's case, the defendants may introduce evidence. The defendants are not required to introduce any evidence or to call any witnesses. If the defendants introduce evidence, the plaintiff may then introduce rebuttal evidence.

Third, after the evidence is presented, the parties will make closing arguments explaining what they believe the evidence has shown and what inferences you should draw from the evidence. What is said in closing argument is not evidence. The plaintiff has the right to give the first closing argument and to make a short rebuttal argument after the defendants' closing argument.

Fourth, I will instruct you on the law that you are to apply in reaching your verdict.

Fifth, you will retire to the jury room and begin your deliberations.

You will hear the term "burden of proof" used during this trial. In simple terms, the phrase "burden of proof" means that the party who makes a claim has the obligation of proving that claim. At the end of the trial, I will instruct you on the proper burden of proof to be applied in this case.

The trial day will run from 9:00 a.m. until 5:30 p.m. You will have at least an hour for lunch and two additional short breaks, one in the morning and one in the afternoon.

During recesses you should keep in mind the following instructions:

First, do not discuss the case either among yourselves or with anyone else during the course of the trial. The parties to this lawsuit have a right to expect from you that you will

keep an open mind throughout the trial. You should not reach a conclusion until you have heard all of the evidence and you have heard the lawyers' closing arguments and my instructions to you on the law, and have retired to deliberate with the other members of the jury. I must warn you, in particular, against commenting about the trial in an e-mail or a blog or Twitter. There have been news accounts recently about cases that have had to be re-tried because a member of the jury communicated electronically about the case during the trial. You can imagine what this would mean in the cost of a re-trial, the inconvenience to your fellow jurors whose work would have gone for nothing and the stress experienced by the parties.

Second, do not permit any third person to discuss the case in your presence. If anyone tries to talk to you despite your telling him not to, report that fact to the court as soon as you are able. Do not discuss the event with your fellow jurors or discuss with them any other fact that you believe you should bring to the attention of the court.

Third, although it is a normal human tendency to converse with people with whom one is thrown in contact, please do not talk to any of the parties or their attorneys or witnesses. By this I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the absolute impartiality they are entitled to expect from you as jurors.

Fourth, do not read about the case in the newspapers, or listen to radio or television broadcasts about the trial. If a newspaper headline catches your eye, do not examine the article further. Media accounts may be inaccurate and may contain matters that are not proper for your consideration. You must base your verdict solely on the evidence produced in court.

Fifth, no matter how interested you may become in the facts of the case, you must not do any independent research, investigation or experimentation. Do not look up

materials on the internet or in other sources. Again, you must base your verdict solely on the evidence produced in court.

Credibility of Witnesses

In deciding the facts, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it. In considering the testimony of any witness, you may take into account many factors, including the witness's opportunity and ability to see or hear or know the things the witness testified about; the quality of the witness's memory; the witness's appearance and manner while testifying; the witness's interest in the outcome of the case; any bias or prejudice the witness may have; other evidence that may have contradicted the witness's testimony; and the reasonableness of the witness's testimony in light of all the evidence. The weight of the evidence does not necessarily depend upon the number of witnesses who testify.

Depositions

During the course of a trial the lawyers will often refer to and read from depositions. Depositions are transcripts of testimony taken while the parties are preparing for trial. Deposition testimony is given under oath just like testimony on the trial. You should give it the same consideration you would give it had the witnesses testified here in court.

Objections

During the trial, you will hear the lawyers make objections to certain questions or to certain answers of the witnesses. When they do so, it is because they believe the question or answer is legally improper and they want me to rule on it. Do not try to guess why the objection is being made or what the answer would have been if the witness had been allowed to answer it.

If I tell you not to consider a particular statement that has already been made, put that statement out of your mind and remember that you may not refer to it during your deliberations.

Questions

During the trial, I may sometimes ask a witness questions. Please do not assume that I have any opinion about the subject matter of my questions.

If you wish to ask a question about something you do not understand, write it down on a separate slip of paper. If, when the lawyers have finished all of their questioning of the witness, the question is still unanswered to your satisfaction, raise your hand, and I will take the written question from you, show it to counsel, and decide whether it is a question that can be asked. If it cannot, I will tell you that. I will try to remember to ask about questions after each witness has testified.

Notetaking

If you want to take notes, there are notepads and pencils for taking notes next to the jury bench. This does not mean you have to take notes; take them only if you want to and if you think they will help you to recall the evidence during your deliberations. Do not let notetaking interfere with your important duties of listening carefully to all of the evidence and of evaluating the credibility of the witnesses. Keep in mind that just because you have written something down it does not mean that the written note is more accurate than another juror's mental recollection of the same thing. No one of you is the "secretary" for the jury, charged with the responsibility of recording evidence. Each of you is responsible for recalling the testimony and other evidence.

Although you can see that the trial is being reported, you should not expect to be able

to use trial transcripts in your deliberations. You will have to rely on your own memories.

Evidence

Evidence at a trial includes the sworn testimony of the witnesses, exhibits admitted into the record, facts judicially noticed, and facts stipulated by counsel. You may consider only evidence that is admitted into the record.

In deciding the facts of this case, you are not to consider the following as evidence: statements and arguments of the lawyers, questions and objections of the lawyers, testimony that I instruct you to disregard, and anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

Evidence may be either direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness said or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You are to decide how much weight to give any evidence.

Contradictory or Impeaching Evidence

A witness may be discredited by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

If you believe any witness has been discredited, it is up to you to decide how much of the testimony of that witness you believe.

If a witness is shown to have given false testimony knowingly, that is, voluntarily and

intentionally, about any important matter, you have a right to distrust the witness's testimony about other matters. You may reject all the testimony of that witness or you may choose to believe some or all of it.

The general rule is that if you find that a witness said something before the trial that is different from what the witness said at trial you are to consider the earlier statements only as an aid in evaluating the truthfulness of the witness's testimony at trial. You cannot consider as evidence in this trial what was said earlier before the trial began.

There is an exception to this general rule for witnesses who are the actual parties in the case. If you find that any of the parties made statements before the trial began that are different from the statements they made at trial, you may consider as evidence in the case whichever statement you find more believable.

Drawing of Inferences

You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts you find have been proved, such reasonable conclusions as seem justified in the light of your own experience and common sense.

Experts

A person's training and experience may make him or her a true expert in a technical field. The law allows that person to state an opinion here about matters in that particular field. It is up to you to decide whether you believe the expert's testimony and choose to rely upon it. Part of that decision will depend on your judgment about whether the expert's background of training and experience is sufficient for him or her to give the expert opinion that you heard, and whether the expert's opinions are based on sound reasons, judgment, and information.

During the trial, an expert witness may be asked a question based on assumptions

that certain facts are true and then asked for his or her opinion based upon that assumption. Such an opinion is of use to you only if the opinion is based on assumed facts that are proven later. If you find that the assumptions stated in the question have not been proven, then you should not give any weight to the answer the expert gave to the question.