

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES AND EXCHANGE)	
COMMISSION,)	
<i>Plaintiff,</i>)	
)	1:15-cv-00659-JMS-MJD
<i>vs.</i>)	
)	
TOBIN J. SENEFELD, ET AL.,)	
<i>Defendants.</i>)	

FINAL PRETRIAL CONFERENCE ORDER

The final pretrial conference in this action is scheduled for **9:30 a.m.** on **October 11, 2017** in **Room 307**, United States Courthouse, 46 E. Ohio Street, Indianapolis, IN 46204. To facilitate the conference, and ultimately the trial, the Court now **ORDERS** as follows. To the extent that any instructions in this order conflict with those set forth in the case management plan, the instructions set forth in this order control. Copies of filings to be emailed to the Courtroom Deputy in MS Word form can be sent to **Judge_Stinson_Chambers@insd.uscourts.gov**.

Trial Witness List. Each party must file a Trial Witness List by **September 29, 2017**, listing only the witnesses the party anticipates actually calling to testify at trial. Absent consent of the opposing party, no witness that has not been previously listed may be included. A brief summary of each witness' expected testimony shall be included. Objections to any witness on another party's Trial Witness List must be filed by **October 6, 2017**. The parties must be prepared to argue any objections at the final pretrial conference.

Trial Exhibit List. Each party must file a Trial Exhibit List by **September 29, 2017**, listing only the exhibits the party anticipates actually presenting at trial. The exhibits must be listed in an identifiable manner, such as by Bates numbers or by another system upon which all parties have

agreed. Absent consent of the opposing party, no exhibit that has not been previously listed may be included. It is not sufficient to describe exhibits by category, such as “all exhibits identified in discovery.” Objections to an exhibit on another party’s Trial Exhibit List must be filed by **October 6, 2017**. The parties must be prepared to argue any objections at the final pretrial conference.

Voir dire. Absent specific objection raised before and sustained at the pretrial conference, the Court will examine the venire using the questions attached as **Exhibit 1**. As per the undersigned’s Practices & Procedures, the parties will be permitted to conduct their own examinations of the venire after the Court has completed its examination, subject to a time limit to be decided at the pretrial conference. If, despite the opportunity for party-conducted voir dire, a party proposes that the Court pose additional questions to the venire other than those that are attached as **Exhibit 1**, the party must file those proposed additional questions no later than **September 29, 2017**. The proposed questions must be accompanied by a statement (1) as to whether the opposing party objects to the proposed questions and (2) if there is any objection, that the parties have met and conferred in an attempt to resolve the objection. Objections to **Exhibit 1** must also be filed no later than **October 6, 2017**.

Joint case synopsis. Both as part of voir dire and as part of the preliminary instructions, the Court will read a brief joint case synopsis of the claims and defenses in this action. After meeting and conferring, the parties must file their joint case synopsis no later than **October 6, 2017**. If they cannot agree, they must file competing versions of the case synopsis by that date. The parties must be prepared to present argument about competing case synopses at the pretrial conference.

Preliminary instructions. Absent specific objection raised before and sustained at the pretrial conference, the Court will give the jury the preliminary instructions attached as **Exhibit 2**. If

any party desires additional preliminary instructions or objects to the Court's preliminary instructions, the party must (1) meet and confer with the opposing party in an attempt to reach an agreed resolution, (2) file the proposed change(s) to **Exhibit 2** no later than **September 29, 2017** and (3) email the proposed change(s) as an MS Word file to the Courtroom Deputy. If agreement cannot be reached, any response to a party's proposed change(s) must be filed no later than **October 6, 2017**. The parties must be prepared to present argument about the proposed change(s) at the pretrial conference.

Generic final instructions. Absent specific objection raised before and sustained at the pretrial conference, the Court will include the instructions attached as **Exhibit 3**, which are all non-case-specific final instructions, as part of the Court's final instructions to the jury. If any party objects to any instruction included in **Exhibit 3**, the party must (1) meet and confer with the opposing party in an attempt to reach an agreed resolution, (2) file the proposed change(s) to **Exhibit 3** no later than **September 29, 2017**, and (3) email the proposed change(s) as an MS Word file to the Courtroom Deputy. If agreement cannot be reached, any response to a party's proposed change(s) must be filed no later than **October 6, 2017**. The parties must be prepared to present argument about the proposed change(s) at the pretrial conference.

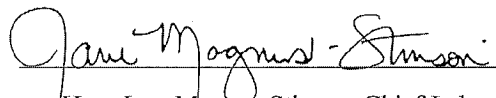
Case-specific final instructions. The parties must meet and confer in an attempt to craft an agreed set of case-specific final jury instructions. The Court directs the parties to the Seventh Circuit's Civil Pattern Jury Instructions, which may provide helpful guidance (available at <http://www.ca7.uscourts.gov/pattern-jury-instructions/pattern-jury.htm>). All agreed instructions must both be filed and emailed to the Courtroom Deputy as an MS Word file no later than **September 29, 2017**. All instructions to which there is no agreement must also be filed and emailed as an MS Word file to the Courtroom Deputy by that date, but the proposing party must

additionally file a brief statement—no more than one page per instruction—providing the rationale, together with citations to authority, for giving the instruction. Any response to a party's proposed instructions on which there is no agreement must be filed no later than **October 6, 2017**. The parties must be prepared to present argument about the contested instructions at the pretrial conference.

Verdict forms. The parties must meet and confer in an attempt to create agreed verdict forms. If agreement can be reached, the verdict forms must both be filed and emailed to the Courtroom Deputy as an MS Word file no later than **October 6, 2017**. If agreement cannot be reached, competing verdict forms must be filed and emailed to the Courtroom Deputy by that time. The parties must be prepared to present argument about the competing verdict forms at the pretrial conference.

Motions in Limine. All motions in limine must be filed no later than **September 29, 2017**. Responses are due **October 6, 2017**. No replies are necessary. The parties must be prepared to argue motions in limine at the pretrial conference.

Date: 9/25/2017


Hon. Jane Magnus-Stinson, Chief Judge
United States District Court
Southern District of Indiana

Distribution via United States Mail to:

Tobin J. Senefeld
6329 Glen Coe Drive
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Distribution via ECF only to all counsel of record

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EXHIBIT 1 - PROPOSED VOIR DIRE

1. Does anyone know me?
2. Do any of you know each other?
3. Does anyone know any of the lawyers in this case?
 - a. Doressia Hutton – United States Securities and Exchange Commission
 - b. Robert Moye – United States Securities and Exchange Commission
4. Does anyone know, or have ever had dealings with, any of the parties in this case?
 - a. United States Securities and Exchange Commission
 - b. Tobin Senefeld
5. Does anyone know any of the expected witnesses in this case?
 - a. [List]
6. I am now going to read a brief overview about this case. [Joint case synopsis read.] Has anyone read or heard anything about this case?
7. Has anyone ever been the victim of securities fraud, or been involved in litigation related to securities fraud?
8. This trial may last up to 5 days. If selected, is there any reason—including anything health related or extreme financial distress—why serving on the jury would be particularly difficult for you?
9. Have you ever served as a juror in a criminal or civil case or as a member of a grand jury in either a federal or state court?

10. Under the law, all parties are equal. If selected to serve as a juror on this case, would any of you find it difficult to treat all the parties in this case fairly and impartially?
11. Is there anyone here who has difficulty reading, hearing, or speaking the English language?
12. At the end of this case, you will be asked to apply a standard of proof called a “preponderance of the evidence.” That standard is different than the standard that applies in criminal cases, which you may know is proof “beyond a reasonable doubt.” A preponderance of the evidence is a lesser standard of proof, requiring only that you decide what is more probably true than not true. Is there anyone here who would have difficulty applying a “preponderance of the evidence” standard?
13. At the beginning and the end of the trial, I will give instructions to the jurors selected for this case. Those instructions represent the law that the jury must follow, even if the jury disagrees with the law. Is there anyone here who would have difficulty following the law, as I explain it to you in my instructions?
14. Is there any reason not covered by one of my questions that would prevent you from being able to listen with an unbiased mind to the evidence in this case and reach a fair and impartial decision, based solely on the evidence presented to you and the instructions on the law?

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EXHIBIT 2 - PROPOSED PRELIMINARY INSTRUCTIONS

Ladies and gentlemen, you are now the jury in this case, and I want to take a few minutes to tell you about your duties as jurors and to give you preliminary instructions. At the end of the trial, I will give you more detailed instructions. Those instructions will control your deliberations.

One of my duties is to decide all questions of law and procedure. From time to time during the trial and at the end of the trial, I will instruct you on the rules of law that you must follow in making your decision.

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.

Preliminary Instruction No. 1

[Parties' joint case synopsis]

Preliminary Instruction No. 2

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side is not necessarily evidence of a greater weight.

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

Preliminary Instruction No. 3

You must give separate consideration to each claim in this case.

[If evidence was admitted only as to fewer than all claims:] In considering a claim against a defendant, you must not consider evidence admitted only as to other claims.

Preliminary Instruction No. 4

Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

In this case one of the parties is a governmental entity. All parties are equal before the law. A governmental entity is entitled to the same fair consideration that you would give any individual person.

Preliminary Instruction No. 5

From time to time during the trial, I may be called upon to make rulings of law on objections or motions made by the lawyers. You should not infer or conclude from any ruling or other comment I may make that I have any opinions about how you should decide this case. And if I should sustain an objection to a question that goes unanswered by a witness, you should not guess or speculate what the answer might have been, and you should not draw any inferences or conclusions from the question itself.

Preliminary Instruction No. 6

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and any facts that I may instruct you to find or the parties may agree or stipulate to. A stipulation is an agreement between both sides that certain facts are true.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case: the attorneys' statements, arguments, questions, and objections of the attorneys; any 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.

Preliminary Instruction No. 7

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact or a series of facts that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago, and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

Preliminary Instruction No. 8

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness' memory;
- any interest, bias, or prejudice the witness may have;
- the witness' intelligence;
- the manner of the witness while testifying;
- the witness's age; and
- the reasonableness of the witness' testimony in light of all the evidence in the case.

Preliminary Instruction No. 9

At times during the trial it may be necessary for me to talk with the lawyers here at the bench out of your hearing, or by calling a recess. We meet because often during a trial something comes up that doesn't involve the jury.

We will, of course, do what we can to keep the number and length of these conferences to a minimum. But you should remember the importance of the matter you are here to determine and should be patient even though the case may seem to go slowly.

Preliminary Instruction No. 10

Any notes you take during this trial are only aids to your memory. The notes are not evidence. If you do not take notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

When you leave the courthouse during the trial, your notes should be left in the jury room. When you leave at night, your notes will be secured and not read by anyone. At the end of the trial, your notes will be destroyed, and no one will be allowed to read the notes before they are destroyed.

Preliminary Instruction No. 11

Pay close attention to the testimony as it is given. At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult.

Preliminary Instruction No. 12

You may submit questions to witnesses to clarify their testimony during trial under certain conditions. If you feel the answer to your question would be helpful in understanding this case, you should raise your hand after the lawyers have completed their examinations but before the witness is excused. You should write your question and hand it to the Courtroom Deputy. I will then privately confer with the lawyers about the question and make a ruling on whether the law allows the question to be asked of that witness. If the question is of the type that is allowed, I will address the question to the witness. Please do not directly speak to me, the lawyers, or the witnesses, but carefully follow this procedure if you wish to have a specific question addressed to a witness.

Preliminary Instruction No. 13

During the trial, I may sometimes ask a witness questions or seek clarification of an answer or question. Do not assume that because I ask questions I hold any opinion on the matters I ask about, or on how the case should be decided.

Preliminary Instruction No. 14

All jurors must follow certain rules of conduct, and you must follow them, too.

First, until you are discharged as a juror, you must not consume any alcohol, drugs, or other substances that would prevent you from understanding and considering the evidence in this case fairly and impartially.

Second, until you have finished your deliberations, you must not discuss this case with anyone—including with members of your family, people involved in the trial, or anyone else. This includes not mentioning this case on Facebook, Twitter, MySpace, on a blog, or on a post to any website. You must not let others discuss the case with you. If anyone tries to talk to you about the case please let me know about it immediately. The trial lawyers are not allowed to speak with you during this case. When you see them at recess or pass them in the halls and they do not speak to you, they are not being rude or unfriendly; they are simply following the law. If any attempt is made by anyone to talk to you concerning this case, you should report that fact to the Courtroom Deputy immediately.

Third, you 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.

Fourth, you must not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with it.

Fifth, if you need to communicate with me, you must give a signed note to the bailiff to give to me.

Sixth, you must not make up your mind about what the verdict should be until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence. Until that time, do not discuss the case with your fellow jurors, and keep an open mind.

Finally, if at any time you decide that you have personal knowledge about any fact that is material to this case, you must inform the Court immediately in writing.

Preliminary Instruction No. 15

The trial will proceed in the following manner:

First, Plaintiff's attorney may make an opening statement. Next, Defendant may make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney or Defendant expects the evidence to be.

After the opening statements, Plaintiff will call witnesses and present evidence. Then, Defendant will have an opportunity to call witnesses and present evidence. After the parties' main cases are completed, Plaintiff may be permitted to present rebuttal evidence [and Defendant may be permitted to present sur-rebuttal evidence].

After the evidence has been presented, the parties will make closing arguments and I will instruct you on the law that applies to the case.

After that, you will go to the jury room to deliberate on your verdict.

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EXHIBIT 3 - PROPOSED FINAL INSTRUCTIONS THAT APPLY TO ALL CLAIMS

Members of the jury, the preliminary instructions I gave you at the beginning of the trial remain in effect. I now am going to read the final jury instructions. It is your duty to follow all of the instructions. You must not single out some instructions and ignore others because all are important. A copy of both the preliminary and final jury instructions will be available to you in the jury room during your deliberations.

Final Instruction No. 1

You have seen and heard all the evidence and arguments of the attorneys and Defendant. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow the Court's instructions, even if you disagree with them.

Perform these duties fairly and impartially. Do not allow sympathy/prejudice/fear/public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

Final Instruction No. 2

The evidence consists of the testimony of the witnesses [,] [and] the exhibits admitted in evidence [, and stipulation[s]].

[A stipulation is an agreement between both sides that [certain facts are true] [that a person would have given certain testimony].]

[I have taken judicial notice of certain facts. You must accept those facts as proved.]

Final Instruction No. 3

Certain things are not to be considered as evidence. I will list them for you.

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the opening statements and closing arguments are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what is said in opening statements or closing arguments, your memory is what counts.

Final Instruction No. 4

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

Final Instruction No. 5

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact or a series of facts that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago, and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

Final Instruction No. 6

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

Final Instruction No. 7

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness' memory;
- any interest, bias, or prejudice the witness may have;
- the witness' intelligence;
- the manner of the witness while testifying;
- the witness's age; and
- the reasonableness of the witness' testimony in light of all the evidence in the case.

Final Instruction No. 8

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

Final Instruction No. 9

[Begin case specific instructions.]

Final Instruction No. 10

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against a particular party, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

Final Instruction No. 11

Upon retiring to the jury room, select one of your members as your presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

A verdict form has been prepared for you.

Take the form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in the verdict form and date it.

When you wish to return your verdict, notify the bailiff in writing.

Final Instruction No. 12

Once you start deliberating, do not communicate about the case or your deliberations with anyone except other members of your jury. You may not communicate with others about the case or your deliberations by any means. This includes oral or written communication, as well as any electronic method of communication, such as telephone, cell phone, smart phone, iPhone, Blackberry, computer, text messaging, instant messaging, the Internet, chat rooms, blogs, websites, or services like Facebook, MySpace, LinkedIn, YouTube, Twitter, or any other method of communication.

If you need to communicate with me while you are deliberating, send a note through the bailiff. The note should be signed by the presiding juror, or by one or more members of the jury. To have a complete record of this trial, it is important that you do not communicate with me except by a written note. I may have to talk to the lawyers about your message, so it may take me some time to get back to you. You may continue your deliberations while you wait for my answer. Often the Court cannot answer a question except by re-reading the jury instructions, so you may find an answer to any question you have in the instructions. Please be advised that transcripts of trial testimony are not available to you. You must rely on your collective memory of the testimony.

If you send me a message, do not include the breakdown of any votes you may have conducted. In other words, do not tell me that you are split 4-4, or 6-2, or whatever your vote happens to be.