

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
WHEATON, DU PAGE COUNTY, ILLINOIS**

**VILLAGE OF WOODRIDGE**, a municipal  
corporation,

Plaintiff,

v.

**BOARD OF EDUCATION OF COMMUNITY  
HIGH SCHOOL DISTRICT 99**, a body politic and  
corporate, **COUNTY BOARD OF SCHOOL  
TRUSTEES OF DU PAGE COUNTY, ILLINOIS**,  
a body politic and corporate, for the use and benefit  
of School District Number 99, Du Page County, Illinois  
and **UNKNOWN OWNERS**,

Defendants.

No. 05 ED 64

**RESPONSE TO VILLAGE MOTION IN LIMINE NO. 5  
FOR JURY INSTRUCTIONS AT THE BEGINNING OF THE CASE**

Defendant Community High School District 99 (the “High School District”), by DLA Piper US LLP, its attorneys, for its response to the Village of Woodridge’s Motion *in limine* No. 5 Requesting the Court to Read Certain Jury Instructions at the Inception of the Case (In Addition to Prior to Closing Argument) to Assist the Jury in Evaluating the Trial Testimony, states:

Supreme Court Rule 239 governs the instruction by the Court of the jury during trial.

Rule 239(d) provides, in pertinent part:

**(d) Instructions Before Opening Statements.** After the jury is selected and before opening statements, the court may orally instruct the jury as follows:

(i) On cautionary or preliminary matters, including, but not limited to, the burden of proof, the believability of witnesses and the receipt of evidence for a limited purpose. The court need not read these instructions after closing arguments.

(ii) On the issue of the substantive law applicable to the case, including, but not limited to, the elements of the claim or affirmative defense. The court shall read these instructions after closing arguments.

Illinois Supreme Court Rule 239(d). The Illinois Pattern Jury Instructions supplement Rule 239.

The commentary to the Illinois Pattern Jury Instructions indicates:

The instructions in the 1.00 series are intended to be given before opening statements, along with any substantive instructions the court deems appropriate. The instructions in the 2.00 series are intended for use during trial. The instructions in the 3.00 series are intended for use after closing argument. The Court may also repeat instructions from the 1.00 and 2.00 series after closing arguments.

IPI (Civil) (2006 ed.) at 11. Accordingly, IPI (Civil) No. 1.01 – Plaintiff’s Instruction No. 1 and Defendant’s Instruction No. 1 – is properly given before opening statements.<sup>1</sup> However, IPI (Civil) No. 2.04 – Plaintiff’s Instruction No. 6 and Defendant’s Instruction No. 2 – is intended for use during trial, if a witness provides the kind of testimony that triggers this instruction. It should not be given until such time as the circumstance arises.

No authority is cited by the Village for instructing the jury prior to opening statements with IPI (Civil) No. 300.11,<sup>2</sup> No. 300.80, No. 300.81 or No. 300.84. There is no indication in the Illinois Pattern Jury Instructions that any of these instructions are to be given prior to the end of the trial. The three cases cited by the Village were not eminent domain cases and did not consider the timing of jury instructions.<sup>3</sup>

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<sup>1</sup> There are wording differences between Plaintiff’s Instruction No. 1 and Defendant’s Instruction No. 1. The Court can resolve these in a pre-trial instructions conference.

<sup>2</sup> Plaintiff’s Instruction No. 2 is a modified version of IPI (Civil) No. 300.11. That pattern instruction is to be used in the case of a partial take, when the fact of damage to the remainder is contested. It is not applicable, and should not be given, when the condemning body is taking an entire property without leaving any remainder. Defendant has submitted IPI (Civil) No. 300.10, the issues instruction that is applicable to whole takes like the one here.

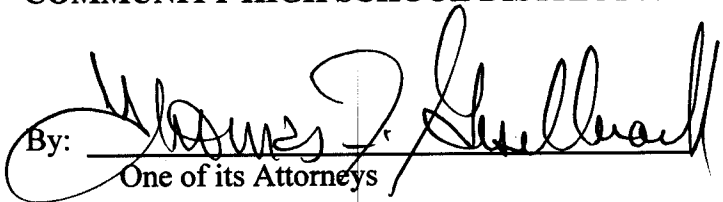
<sup>3</sup> O’Connell v. St. Francis Hospital, 112 Ill.2d 273, 277, 492 N.E.2d 1322, 1324 (1986) involved a certified question on the dismissal of a re-filed complaint after a voluntary dismissal.

Thus, while the High School District has no objection to the instruction of the jury before opening statements with the proper version of IPI (Civil) No. 1.01, as modified by IPI (Civil) No. 300.01, the remainder of the instructions should await a proper circumstance in the evidence as it arises at trial, or should await the closing of the evidence and the conclusion of closing arguments.

**WHEREFORE**, defendant Community High School District 99 respectfully requests the Court to enter an order denying the Village's motion in part, so as only to allow the instruction of the jury with IPI (Civil) No. 1.01, as modified by IPI (Civil) No. 300.01, prior to opening statements.

**COMMUNITY HIGH SCHOOL DISTRICT 99**

Date: February 28, 2008

By:   
One of its Attorneys

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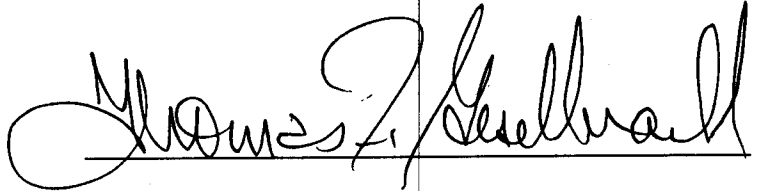
Worthy v. Norfolk and Western Ry., 249 Ill. App. 3d 1096, 1097, 619 N.E.2d 1371, 1372 (5th Dist. 1993) involved only the propriety of the use of a non-IPI instruction. And Taylor Machine Works v. Union Pacific R.R., 179 Ill.2d 367, 689 N.E.2d 1057 (1997) resolved the constitutionality of the Civil Justice Reform Amendments of 1995 and struck down certain instructions mandated by the legislature based on the separation of powers doctrine.

**CERTIFICATE OF SERVICE**

I, Thomas F. Geselbracht, an attorney, hereby certify that I caused the foregoing  
RESPONSE TO VILLAGE MOTION *IN LIMINE* NO. 5 FOR JURY INSTRUCTIONS AT  
THE BEGINNING OF THE CASE, to be served upon:

Phillip A. Luetkehans  
Robert W. Funk  
Schirott & Luetkehans, P.C.  
105 East Irving Park Road  
Itasca, Illinois 60143

by e-mail delivery to [rfunk@sl-atty.com](mailto:rfunk@sl-atty.com) and by depositing true and correct copies so addressed  
in the United States postal drop located at 203 North LaSalle Street, Chicago, Illinois, before  
5:00 p.m., this 28th day of February, 2008, with proper postage prepaid.

A handwritten signature in black ink, appearing to read "Thomas F. Geselbracht", written over a horizontal line.