

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
DIVISION**

,		
Plaintiff,		
v.		CV
,		
Defendant.		

**SEXUAL HARASSMENT CASES
COURT’S INSTRUCTIONS TO THE JURY**

Members of the Jury:

I will now explain to you the rules of law that you must follow and apply in deciding this case.

When I have finished and the lawyers have made their closing arguments, you will go to the jury room and begin your discussions – what we call your deliberations.

A jury trial has, in effect, two judges. I am one of the judges; the other judge is the jury. My duty is to preside over the trial and to decide what evidence is proper for your consideration. My duty at the end of the trial is to explain to

you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give some general instructions that apply in every case; for example, instructions about burden of proof and how to judge the believability of witnesses. Then I will give you some specific rules of law about this particular case, and finally I will explain to you the procedures you should follow in your deliberations.

Your Duty

Your duty will be to decide whether [Plaintiff] has proved by a preponderance of the evidence the specific facts necessary to find [Defendant Employer] liable on the claims asserted against it, and whether [Plaintiff] has proved by a preponderance of the evidence the facts necessary to find [Defendant Supervisor] liable on the claims asserted against him. I will give you more instructions about the specific claims in a minute.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial. You, as jurors, are the judges of the facts. You must not be influenced in any way by either sympathy or prejudice, for or against either party, but in determining what actually happened – that is, in reaching your decision as to the facts – your sworn duty is to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. Your duty is to apply the law as I explain it to you, regardless of whether you like the law or its consequences.

Your duty also is to base your verdict solely upon the evidence, without prejudice or sympathy for or against anyone. You made that promise and took that oath before being accepted by the parties as jurors, and they have the right to expect nothing less.

Remember that anything the lawyers say is not evidence in the case. Your own recollection and interpretation of the evidence controls. What the lawyers say is not binding upon you. Also, you should not assume from anything I may have said that I have any opinion concerning any of the issues in this case. Nor should you give any special attention to any questions I have asked. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision concerning the facts.

Corporate Party

The fact that a corporation is involved as a party must not affect your decision in any way. A corporation and all other persons stand equal before the

law and must be dealt with as equals in a court of justice. When a corporation is involved, of course, it may act only through people as its employees; and, in general, a corporation is responsible under the law for any of the acts and statements of its employees that are made within the scope of their duties as employees of the company.

Evidence

In your deliberations you should consider only the evidence—that is, the testimony of the witnesses and the exhibits I have admitted in the record. As you consider the evidence, both direct and circumstantial, you may make deductions and reach conclusions that reason and common sense lead you to make. In other words, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of your common experience.

You should not be concerned about whether the evidence is direct or circumstantial. “Direct evidence” is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. “Circumstantial evidence” is proof of a chain of facts and circumstances tending to prove, or disprove, any fact in dispute. The law makes no distinction between the weight you may give to either direct or circumstantial evidence, or to the reasonable inferences you draw from direct or circumstantial evidence.

Limiting Instructions

Throughout the course of trial, I have instructed you that you could only consider certain evidence for a limited purpose. I want to remind you of those limitations as to the use of some evidence.

First, as to any evidence of allegations of conduct by [Defendant Supervisor] prior to his employment with [Defendant Employer]: You can only consider such evidence for the limited purpose of whether it shows motive, intent, knowledge or absence of mistake as to the claims against [Defendant Supervisor]. Such evidence, however, should not be considered by you as proof that he did those acts of which [Plaintiff] complains.

Second, as to any evidence of allegations made against [Defendant Supervisor] by other employees of [Defendant Employer] to [Defendant Employer] prior to [Plaintiff]'s complaint: such evidence may also be considered on the question of [Defendant Supervisor]'s motive, intent or absence of mistake. And, you may also consider such evidence in deciding whether [Defendant Employer] had knowledge or should have known of such alleged conduct by [Defendant Supervisor].

Third, from time to time I admitted documents for limited purposes only. Those documents were not offered or admitted for the truth of the information

contained in them, but for some other purpose. Therefore, as to those documents, you can only consider them for that other purpose – such as whether someone had seen and/or relied upon such information, or to establish the dates on which some actions occurred.

Credibility

Now, in saying that you must *consider* all of the evidence, I do not mean that you must *accept* all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision, you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling.

In deciding whether you believe or do not believe any witness, I suggest that you ask yourself a few questions: Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of this case or a related case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things about which he or she testified? Did the witness appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from other testimony or other

evidence?

You should also ask yourself whether evidence was offered tending to prove that a witness testified falsely concerning some important fact; or, whether evidence was offered that at some other time a witness said or did something, or failed to say or do something, that was different from the testimony the witness gave before you during the trial.

The fact that a witness has been convicted of a felony offense, or a crime involving dishonesty or false statement, is another factor you may consider in deciding whether you believe the testimony that witness gave in this trial. Of course, the conviction is only one factor, and you must decide for yourself whether to believe that witness.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether it was simply an innocent lapse of memory, an innocent mistake, or an intentional falsehood; and the significance of that consideration may depend on whether the misstatement relates to an important fact or with only an unimportant detail.

When a witness is questioned about an earlier statement he or she may have made, or earlier testimony he or she may have given, such questioning is permitted to aid you in evaluating the truth or accuracy of the witness' testimony here at this trial.

Earlier statements made by a witness or earlier testimony given by a witness are not ordinarily offered or received as evidence of the truth or accuracy of *those* statements, but are referred to for the purpose of giving you a comparison and aiding you in making your decision as to whether you believe or disbelieve the witness' testimony that you hear at trial. However, if the prior inconsistent statement of the witness was made under oath, such as in a deposition, you may also consider it as evidence, if you so choose.

Whether such prior statements of a witness are, in fact, consistent or inconsistent with his or her trial testimony is entirely for you to determine. You can also decide whether to believe the earlier testimony given under oath, or the testimony given in this trial, or you can disregard both. You are the sole judge of the credibility of witnesses.

Deposition Testimony

In this case, we have heard the testimony of some witnesses by deposition. When a person is unavailable to testify at trial, the deposition of that person may

be used at the trial. A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded. Deposition testimony is entitled to the same consideration and is to be judged, insofar as possible, in the same way as if the witness had been present to testify. As to the depositions that were read, do not place any significance on the behavior or tone of voice of any person reading the questions or answers. You should treat deposition testimony the same as any other testimony presented in court.

Burden of Proof

In this case each party asserting a claim or a defense has the responsibility to prove every essential part of the claim or defense by a “preponderance of the evidence.” This requirement is sometimes called the “**burden of proof**” or the “burden of persuasion.”

A “**preponderance of the evidence**” simply means an amount of evidence that is enough to persuade you that a claim or defense is more likely true than not true.

In this case, [Plaintiff] has the burden to prove all the requirements of each of her claims. Because [Defendant Employer] asserts affirmative defenses, which I will explain in a minute, it bears the burden of proving all the requirements of

those defenses by a preponderance of evidence.

When more than one claim is involved, and when more than one defense is asserted, you should consider each claim and each defense separately; but in deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses, regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

If the proof fails to establish any essential part of a claim or contention or defense by a preponderance of the evidence, you should find against the party making that claim or defense.

SPECIFIC LEGAL CHARGES

[Plaintiff] brings a total of 7 claims in this case: 4 claims against [Defendant Employer] only; and 3 claims against only [Defendant Supervisor].

I. Claims Against [Defendant Employer]

As to claims against [Defendant Employer] only, [Plaintiff] brings claims under federal law and under Alabama state law. We will first discuss her federal law claims.

A. Title VII – Sexual Harassment/Hostile Work Environment

In this case, [Plaintiff] makes a claim under Federal law that

prohibits employers from discriminating against their employees in the terms and conditions of their employment because of the employee's sex. More specifically, [Plaintiff] claims [Defendant Employer] subjected her to a hostile or abusive work environment because of sexual harassment, which is a form of prohibited employment discrimination. I will call this claim her "sexual harassment claim." Under Title VII, only the employer can be held liable for any kind of discrimination in the workplace.

To prevail on this claim, [Plaintiff] must prove each of the following facts by a preponderance of the evidence:

First: That [Plaintiff] was subjected to a hostile or abusive work environment, as I will later define, because of her sex;

Second: That such hostile or abusive work environment was permitted and/or created by a supervisor with immediate or successively higher authority over [Plaintiff]; and

Third: That [Plaintiff] suffered damages as a proximate or legal result of such hostile or abusive work environment.

[Plaintiff's] work environment was hostile or abusive because of sexual harassment only if (1) [Plaintiff] was subjected to sexually offensive acts or statements; (2) such acts or statements were unwelcome and had not been invited or solicited, directly or indirectly, by [Plaintiff's] own acts or statements; (3) such acts or statements resulted in a work environment that was so permeated with

sexual intimidation, ridicule or insult of sufficient severity or pervasiveness that it materially altered the conditions of [Plaintiff's] employment; (4) a reasonable person, as distinguished from someone who is unduly sensitive, would have found the workplace to be hostile or abusive; and (5) [Plaintiff] personally believed the workplace environment to be hostile or abusive.

You should determine whether a workplace is “hostile” or “abusive” by looking at all the circumstances including the frequency of the sexual conduct; its severity; whether it was physically threatening or humiliating; and whether it unreasonably interfered with the employee’s work performance. The effect on [Plaintiff’s] mental and emotional well being is also relevant to your determination of whether she actually found the workplace environment to be hostile or abusive; but while psychological harm, like any other relevant factor, may be taken into account, no single factor is required.

Conduct that only amounts to ordinary socializing in the workplace -- such as occasional horseplay, sexual flirtation, sporadic or occasional use of abusive language, gender related jokes, and occasional teasing -- does not constitute an abusive or hostile environment. Only extreme conduct amounting to a material change in the terms and conditions of employment is actionable. However, words and conduct that are sufficiently gender-specific, derogatory, and humiliating and

either severe or pervasive may establish a hostile work environment, even if the words are not directed specifically at the Plaintiff. Evidence that a supervisor aimed insults at women may give rise to the inference of an intent to discriminate on the basis of sex, even though the insults are not directed at the Plaintiff. Also, one egregious yet isolated incident may be sufficiently severe as to alter the terms, conditions, or privileges of employment so as to constitute a hostile work environment. The opposite is also true: frequent incidents of harassment, though not severe, can reach the level of pervasive and thereby alter the terms, conditions or privileges of employment such as to create a hostile work environment.

You have heard various witnesses testify as to whether certain conduct is or is not sexual harassment. Ladies and Gentlemen, I instruct you that the decision about whether the conduct alleged by [Plaintiff] occurred, and if so, whether it constituted sexual harassment is a question for you to decide based on these instructions about sexual harassment.

When a supervisor with immediate or successively higher authority over the employee creates a hostile or abusive work environment, the employer is responsible under the law for such behavior and the resulting work environment. So, if you find that [supervisor] was [Plaintiff's] supervisor with authority over her and that he created a hostile or abusive work environment for [Plaintiff], then

[Defendant Employer] would be responsible for that conduct.

Finally, for [Plaintiff] to recover damages for having been exposed to a hostile or abusive work environment because of sex, she must prove that such damages were proximately or legally caused by the unlawful discrimination. For damages to be the proximate or legal result of unlawful conduct, [Plaintiff] must show that, except for such conduct, the damages would not have occurred. I will explain how to determine an appropriate measure of damages after you first render a decision on liability.

[Defendant Employer's] Affirmative Defense

If you find that [Plaintiff] has proven each of the things she must prove in support of her claim, then you will consider [Defendant Employer's] affirmative defense to that claim. To prevail on the affirmative defense, the burden rests on [Defendant Employer] to prove each of the following facts by a preponderance of the evidence:

- First: That [Defendant Employer] exercised reasonable care to prevent and promptly correct any sexually harassing behavior in the workplace; and
- Second: That [Plaintiff] unreasonably failed to take advantage of the preventive or corrective opportunities provided by [Defendant Employer] to avoid or correct the harm.

Ordinarily, proof of the following facts will suffice to establish the exercise

of “reasonable care” by [Defendant Employer] : (a) that [Defendant Employer] had promulgated an explicit policy against sexual harassment in the workplace; (b) that such policy was fully communicated to its employees; and (c) that such policy provided a reasonable avenue for [Plaintiff] to make a complaint to higher management. Conversely, proof that [Plaintiff] did not follow a complaint procedure provided by [Defendant Employer] will ordinarily suffice to establish that [Plaintiff] unreasonably failed to take advantage of a corrective opportunity.

B. Title VII – Retaliation

[Plaintiff] alleges that [Defendant Employer] – through the actions of its employees – retaliated, that is, took revenge against her because she took steps seeking to enforce her rights under the federal employment discrimination statutes. [Defendant Employer] in turn denies that it retaliated against [Plaintiff].

The law prohibiting discrimination and sexual harassment in the workplace also prohibits an employer from taking any retaliatory action against an employee because the employee has asserted rights or made complaints under those laws. Making an internal complaint with the employer alleging sexual harassment or the filing of an EEOC charge is protected activity. So, even if you find that [Plaintiff’s] complaint of sexual harassment is without merit, if you find that [Plaintiff] made the complaint as a means of seeking to enforce what she believed

in good faith to be her lawful rights, then [Defendant Employer] is not allowed to penalize her in retaliation for having made such a complaint.

To establish “good faith” for her complaint, however, [Plaintiff] must do more than merely allege that her belief about sexual harassment was honest and bona fide. Rather, the allegations and the record must establish that her belief – even if a mistaken belief – was objectively reasonable.

To establish her claim of unlawful retaliation, [Plaintiff] must prove by a preponderance of the evidence each of the following:

First: That she engaged in statutorily protected activity – that is, that she in good faith asserted objectively reasonable claims or complaints of sexual harassment that are prohibited by law;

Second: That an adverse employment action then occurred;

Third: That the adverse employment action was causally related to her complaints; and

Fourth: That she suffered damages as a proximate or legal result of such adverse employment action.

For an adverse employment action to be “causally related” to statutorily protected activities, [Plaintiff] must show that, but for the protected activity, the adverse employment action would not have occurred. Or, stated another way, [Plaintiff] must show that her protected activity was a substantial, motivating cause that made a difference in [Defendant Employer’s] actions.

You should be mindful, however, that the law applicable to this case requires only that an employer not retaliate against an employee because that employee has complained about sexual harassment. So far as you are concerned, an employer may take adverse action against an employee for any other reason, whether it be a good, bad, fair, or unfair reason. You must not second guess that decision or permit any sympathy that you may have for [Plaintiff] to lead you to substitute your own judgment for that of [Defendant Employer]'s, even though you may not personally favor the action it took and may have acted differently under those circumstances.

The provision prohibiting retaliation covers those – and only those – employment actions that would have been materially adverse to a reasonable employee. That means that [Plaintiff] must show that a reasonable employee would have found the challenged employment action to be materially adverse such that it could well dissuade a reasonable worker from making a sexual harassment complaint.

Constructive Discharge

In this case, [Plaintiff] claims that the retaliatory conduct amounted to a constructive discharge of her. You must decide whether she was constructively discharged as [Plaintiff] alleges, or whether she voluntarily resigned or quit as

[Defendant Employer] contends.

To prove a constructive discharge, [Plaintiff] must demonstrate that working conditions were so intolerable because of the retaliatory actions taken against her that a reasonable person in like circumstances would have felt compelled to resign.

If you find from a preponderance of the evidence that, because of retaliation, [Plaintiff's] conditions of employment were so intolerable she was forced to quit, then you may conclude that she was constructively discharged. If [Plaintiff] has not proven such intolerable working conditions, then you may find that [Plaintiff's] resignation was voluntary and, if so, [Plaintiff] would not be entitled to any economic damages as a result of the loss of employment. I will explain more about the measure of damages later.

If you find in [Plaintiff's] favor with respect to each of the facts that she must prove, you must then decide whether [Defendant Employer] has shown by a preponderance of the evidence that it would have taken the same action for other reasons even in the absence of the complaints about sexual harassment.

C. Negligent Supervision and/or Retention

[Plaintiff] also brings claims against [Defendant Employer] under Alabama state law arising out of [Defendant Supervisor's] actions and its supervision and/or retention of him.

Alabama law recognizes a claim for negligent supervision and retention against an employer where an employee commits an underlying tort and the employer knew or should have known of the employee's incompetence that resulted in the tort against the Plaintiff. A **"tort"** is a civil wrong for which the law recognizes a remedy. In this case, [Plaintiff] claims that [Defendant Supervisor] committed the following torts against her: assault and battery, invasion of privacy, and intentional infliction of emotional distress under Alabama law as I will explain those to you in a minute.

"Negligence" means the failure to exercise reasonable and ordinary care; that is, such care as a reasonably prudent person or company would have exercised under the same or similar circumstances. Therefore, negligence is the failure to do what a reasonably prudent person or company would have done under the same or similar circumstances, or, the doing of something that a reasonably prudent person or company would not have done under the same or similar circumstances.

To demonstrate [Defendant Employer's] liability for negligent supervision and/or retention, Plaintiff must prove

First: That [Defendant Supervisor] committed one or more of the specified underlying torts;

Second: That [Defendant Employer] knew or in the exercise of due and proper diligence would have known of the unfitness or

incompetency of [Defendant Supervisor] that contributed to that tort;

Third: That [Defendant Employer] failed to respond adequately; and

Fourth: That [Plaintiff] was damaged as a proximate or legal result.

You have heard evidence of other women employees of [Defendant Employer] complaining to [Defendant Employer] about acts of [Defendant Supervisor] prior to Plaintiff's complaint. While testimony about other acts of alleged incompetency or unfitness cannot be used to prove that [Defendant Supervisor] committed the acts alleged by [Plaintiff], you can consider whether such evidence demonstrates repeated acts of carelessness or incompetency by [Defendant Supervisor] of such nature that [Defendant Employer] would have known of such conduct had it exercised reasonable care.

Affirmative Defense: Contributory Negligence

[Defendant Employer] contends that [Plaintiff] should not recover from it on her claim of negligent supervision and/or retention because she was contributorily negligent. "**Contributory negligence**" is negligence by [Plaintiff] that contributed to cause her alleged injury. [Defendant Employer] bears the burden to reasonably satisfy you by a preponderance of the evidence as to the truth of all of the elements of contributory negligence.

To establish contributory negligence, [Defendant Employer] bears the burden of proving that [Plaintiff] (1) had knowledge of the dangerous work environment; (2) had an appreciation of the danger under the surrounding circumstances; and (3) failed to exercise reasonable care by placing herself in the way of danger.

If you are reasonably satisfied from the evidence that [Plaintiff] was guilty of contributory negligence, she cannot recover for any simple negligence by [Defendant Employer].

D. Wanton Supervision and/or Retention

[Plaintiff] also complains that [Defendant Employer]'s supervision and/or retention of [Defendant Supervisor] amounted to wanton conduct. [Defendant Employer]'s conduct is wanton if it consciously acts or fails to act with a reckless or conscious disregard of the rights or safety of others, and it is aware that harm will likely or probably result. The same requirements apply as to supervision and/or retention as I just explained to you. I instruct you that contributory negligence is not a defense to wanton conduct.

II. Claims Against [Defendant Supervisor]

[Plaintiff] brings three claims under Alabama State law against [Defendant Supervisor].

A. Intentional Infliction of Emotional Distress

Specifically [Plaintiff] asserts the tort of outrageous conduct, also called intentional infliction of emotional distress, against [Defendant Supervisor]. [Defendant Supervisor] denies this allegation.

To recover damages on this claim, [Plaintiff] must prove to your reasonable satisfaction by a preponderance of the evidence all of the following:

- First: That [Defendant Supervisor] intended to cause [Plaintiff] emotional distress, or that he knew or should have known that his conduct was likely to cause [Plaintiff] emotional distress;
- Second: That [Defendant Supervisor]'s conduct was extreme and outrageous. Mere insults, threats, annoyances, or merely inviting an unwilling woman to engage in sexual activity do not constitute outrageous conduct. Conduct *becomes* extreme when it is so outrageous in character and so extreme in degree that it goes beyond all bounds of decency, and it is regarded as atrocious and utterly intolerable in a civilized society;
- Third: That [Defendant Supervisor]'s intentional or reckless conduct caused [Plaintiff] emotional distress; and
- Fourth: That [Plaintiff]' emotional distress was so severe that no reasonable person could be expected to endure it.

If you are reasonably satisfied by the evidence that [Defendant Supervisor]'s conduct was so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency so as to be regarded as atrocious and

utterly intolerable in civilized society, and such conduct either intentionally or recklessly caused [Plaintiff] emotional distress so severe that no reasonable person could be expected to endure, then [Defendant Supervisor] is liable to [Plaintiff] for such distress.

B. ASSAULT AND BATTERY

[Plaintiff] claims that [Defendant Supervisor] is liable to her for assault and battery. “Assault and battery” is any touching by one person of the person or clothes of another, in rudeness, or in anger, or in a hostile manner.

[Plaintiff] does not have to prove that [Defendant Supervisor] intended to injure her.

[Plaintiff] has the burden of reasonably satisfying you by a preponderance of the evidence of each of the above elements as to this claim against [Defendant Supervisor].

C. INVASION OF PRIVACY

[Plaintiff] claims damages against [Defendant Supervisor] for the violation of her right of privacy by and intrusion upon her physical solitude or seclusion. The burden rests upon [Plaintiff] to reasonably satisfy you from the evidence of the truthfulness of her claim about the violation of her privacy by [Defendant Supervisor].

A wrongful intrusion upon a person's solitude or seclusion is defined as the intentional wrongful intrusion into the person's private activities in such a manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities.

To recover, [Plaintiff] must prove something in the nature of a prying or intrusion into her personal activities by [Defendant Supervisor] that would be offensive or objectionable to a reasonable person. The intrusion may be a physical intrusion by [Defendant Supervisor] into a place in which [Plaintiff] has secluded herself, or it may be by use of the defendant's senses to oversee or overhear [Plaintiff]' private affairs. The intrusion may be into a private physical space, or it may be into [Plaintiff]' emotional sanctum. The thing or matter into which [Defendant Supervisor] intruded must be of the type considered to be private, and it should be entitled to be private.

[Plaintiff] would be entitled to a verdict on this claim if you are reasonably satisfied from the evidence that

- (1) [Defendant Supervisor] has violated her right of privacy and
- (2) [Plaintiff] suffered the injuries and damages claimed by her as a proximate result of such wrongful conduct on the part of [Defendant Supervisor].

Ladies and Gentlemen, although damage is an element, or requirement, for proving liability on all of Plaintiff's claims, at this time we are not asking you to determine any dollar amount of damages to be awarded to [Plaintiff]. Instead, we are asking you to first determine whether [Plaintiff] has proved that either [Defendant Employer] or [Defendant Supervisor] or both are liable to her on one or more of the claims she brings. If you first find liability, then I will give you additional instructions on how to determine an amount of damages based on your specific findings of liability, if any, after you complete this phase of your assignment.

Any verdict you reach in the jury room must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

The court has prepared a verdict form for your convenience.

(EXPLAIN – SPECIAL INTEROGS?)

[ADD EACH CLAIM SEPARATELY, EACH DEFENDANT SEPARATELY]

You will take the verdict form to the jury room. When you have reached unanimous agreement, you will have your foreperson fill in the verdict form, date and sign it, and then return to the courtroom. When you have reached

your decision knock on the jury room door and tell the marshal that you have a verdict.

> Explain Verdict Form <

We will now hear summations, or closing arguments, from the attorneys. Remember that what the lawyers say is not evidence. I encourage you to test what the lawyers say against your own memory of the evidence. You are the judges of the facts – not the lawyers.

Final Instruction

Ladies and Gentlemen of the Jury:

I remind you once again that the arguments of counsel are not evidence in this case. The court allows counsel to make closing arguments or summations to help you recall the evidence and to help you tie the evidence together. You should not substitute what the lawyers say about the evidence for your own recollection. Neither should you decide this case based on the eloquence of the lawyers and their arguments. You must decide the case solely based on your view of the facts as you find them to be from the evidence, and applying the law to those facts as I have instructed you.

In this case you have been permitted to take notes during the course of the trial, and most of you – perhaps all of you – have taken advantage of that opportunity and have made notes from time to time.

You will have your notes available to you during your deliberations, but you should make use of them only as an aid to your memory. In other words, you should not give your notes any precedence over your independent recollection of the evidence or the lack of evidence; and neither should you be unduly influenced by the notes of other jurors.

I emphasize that notes are not entitled to any greater weight than the

memory or impression of each juror as to what the testimony may have been.

Your duty as jurors is to discuss the case with one another and consult with one another in an effort to reach agreement, if you can do so. Each of you must decide the case for yourself, but only after full and impartial consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to reexamine your own opinion and change your mind, if you become convinced that your initial opinion was wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because the others think differently, or merely to return a verdict.

Remember, in a very real way you are judges – judges of the facts and judges of the credibility of the witnesses. Your only interest is to seek the truth from the evidence in the case.

When you go to the jury room you should first select one of your members to act as your foreperson. The foreperson will guide your deliberations and will speak for you here in court.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the marshal, who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution

you, however, regarding any message or question you might send, that you should not tell me your numerical division at the time.

From this point, you will decide when you want to take your breaks, and when you want to stop for the day. Just let the court security officer know. But you can only discuss the case when all of you are together in the jury room.

I remind you again: do not discuss this case, or anything about it, with anyone outside the jury room. Do not post anything about this case or your jury service on any blog or social networking page. Do not send email messages about the case to anyone. Do not call, text or email each other. Do not conduct any research about any aspect of this case – that means do not consult a dictionary; do not use Google or Wikipedia; do not ask questions of anyone other than each other or me. Remember, as I told you earlier, the only information you should use to decide this case is the evidence presented and the law explained in this courtroom.

At this time, please move to the jury room. You may select your foreperson but wait until Mrs. Wideman brings the exhibits to you. Then you may begin your deliberations.