

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

,		
Plaintiff,		
v.		CV-
,		
Defendant.		

**TITLE VII RACE DISCRIMINATION 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.

Duty

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

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. You, as jurors, are the judges of the facts. 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.

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 treated 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.

During this trial I ruled on objections by counsel as to the admissibility of testimony and other evidence. Counsel have the duty to make such objections to the offer of evidence that counsel deemed improper. You must not concern yourself with the reasons for my rulings because they are controlled and required by rules of law. You are not to speculate as to possible answers to questions that I did not allow to be answered. The overruling of objections to evidence was not intended to indicate the weight to be given such evidence by you. Such admitted evidence will be considered along with all of the other evidence. You are to disregard all evidence that was excluded by the court.

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.

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.

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.

Deposition Testimony

In this case, we have heard the testimony of [one witness] 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. However, do not place any significance on the behavior or tone of voice of any person reading the questions or answers. Otherwise, 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.

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 by a preponderance of the evidence, you should find against the party making that claim or defense.

Specific Instructions

As you are aware, we have two Plaintiffs in this case. In this case each Plaintiff—[Plaintiff]—makes a claim under the Federal Civil Rights statutes that prohibit employers from discriminating against employees in the terms and conditions of their employment because of the employees' race. More specifically, each Plaintiff accuses the Defendant of violating a federal law by terminating her employment because of her race. You must judge each Plaintiff's claim separately but may consider all the evidence presented as to both claims.

The Defendant denies that either Plaintiff was discriminated against in any way, denies that either Plaintiff was terminated because of her race, and asserts that each Plaintiff was terminated for legitimate business reasons that were not related to her race.

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

- First: That she was discharged from employment by the Defendant; and
- Second: That her race was a substantial or motivating factor that prompted the Defendant to take that action.

In this case, the parties agree that the Defendant discharged both Plaintiffs; therefore, the first element is met. So, your task is to determine whether race was a substantial or motivating factor in that decision.

You should be mindful that the law applicable to this case requires only that an employer not discriminate against an employee because of the employee's race. So far as you are concerned in this case, an employer may discharge an employee for any other reason, good or bad, fair or unfair, and you must not second guess that decision or permit any sympathy for the employee to lead you to substitute your own judgment for that of the Defendant even though you personally may not favor the action taken and would have acted differently under the circumstances. Neither does

the law require an employer to extend any special or favorable treatment to employees because of their race.

On the other hand, the Plaintiffs do not need to prove that their race was the sole or exclusive reason for the Defendant's decision. The proof is sufficient if the Plaintiff proves that race was a determinative consideration, which means it made a difference in the Defendant's decision to terminate her employment.

If you find in either or both the Plaintiffs' favor with respect to each of the facts that the Plaintiffs must prove, you must then decide whether the Defendant has shown by a preponderance of the evidence that either or both the Plaintiffs would have been dismissed for other reasons even in the absence of consideration of the Plaintiffs' race. If you find that either or both the Plaintiffs would have been dismissed for reasons apart from race, then you will make that finding in your verdict.

If you are not reasonably satisfied of the truthfulness of either of the Plaintiff's claims, your verdict should be for the Defendant on that claim. If you are reasonably satisfied of the truthfulness of one or both of the Plaintiff's claims, your verdict should be for that Plaintiff. Only if you find the Defendant liable do you consider damages.

Damages

The duty of the court is to instruct you about the measure of damages. By

instructing you on damages, I do not mean to suggest what your verdict should be.

If you find for either Plaintiff on her race discrimination claim, you must determine that Plaintiff's damages. The Plaintiff has the burden of proving damages by a preponderance of the evidence. "Damages" means the amount of money that will reasonably and fairly compensate the Plaintiff for any injury you find was caused to her by the Defendant. You should consider the following as items of damages: back pay, compensatory damages, and punitive damages as I will explain each to you.

Plaintiffs have the burden of proving damages by a preponderance of the evidence, and you should determine what damages, if any, the Plaintiff has proved. Your award must be based upon evidence and not upon speculation, guesswork or conjecture.

If you find for either Plaintiff, you must not take into account any consideration of attorneys' fees or court costs in deciding the amount of either Plaintiff's damages. The matter of attorneys' fees and court costs will be decided later by the court.

(1) Back Pay

A plaintiff in a race discrimination claim may be awarded back pay.

If you find that either Plaintiff has proven her claim of discrimination by a preponderance of the evidence, you may award her as damages any lost wages and benefits she would have received from the Defendant if she had not been discharged, minus the earnings and benefits that Plaintiff received from other employment during that time period. Back pay is not designed to punish the Defendant, rather it is intended to restore the Plaintiff to her rightful economic status absent the effects of the Defendant's unlawful discrimination.

Each Plaintiff bears the burden to prove that she lost wages and/or benefits and the amount.

MITIGATION

An award of back pay to a plaintiff is subject to the plaintiff's duty to mitigate her damages. If she fails to do so for any periods of time for which she seeks damages, then you may not award damages for that time period.

You are instructed that any person who claims damages as a result of an alleged wrongful act on the part of another has a duty under the law to "mitigate" those damages that is, to seek out and take advantage of any reasonable opportunity that may have existed under the circumstances to reduce or minimize the loss or damage. A person mitigates her back pay by seeking employment substantially equivalent to the position she held before her discharge. Each

Plaintiff can recover back pay only for the period that she was available and willing to accept substantially equivalent employment. You must not compensate a Plaintiff for periods of time for which she was not diligently seeking work or was not available for employment.

So, if you should find from a preponderance of the evidence that either or both the Plaintiffs failed to seek out or take advantage of a business or employment opportunity that was reasonably available under all the circumstances shown by the evidence, then you should reduce the amount of that Plaintiff's damages by the amount that could have been reasonably realized if that Plaintiff had taken advantage of such opportunity.

(2) Compensatory Damages

In considering the issue of either Plaintiff's compensatory damages, you are instructed that you should assess the amount you find to be justified by a preponderance of the evidence as full, just and reasonable compensation for all of the Plaintiff's damages, no more and no less. Compensatory damages are not allowed as a punishment and must not be imposed or increased to penalize the Defendant. Also, compensatory damages must not be based on speculation or guesswork because only actual damages are recoverable.

On the other hand, compensatory damages are not restricted to actual loss of

time or money; they cover both the mental and physical aspects of injury—tangible and intangible, which include such factors as emotional pain, humiliation, insult, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses. Thus, no evidence of the value of such intangible things as emotional and mental anguish has been or need be introduced. In that respect you are not trying to determine value, but an amount that will fairly compensate the Plaintiff for those claims of damage. You have no exact standard to apply; any such award should be fair and just in the light of the evidence.

(3) Punitive Damages

The Plaintiffs also claim that their discharge from employment by Defendant was done with malice or reckless indifference to the Plaintiffs' federally protected rights and entitles the Plaintiffs to an award of punitive damages in addition to compensatory damages. A Defendant acts with malice if it acts with ill will or spite. A Defendant acts with reckless indifference if it acts with conscious and indifferent disregard of the Plaintiffs' federally protected rights. Punitive damages are meant to punish the Defendant for the specific conduct that harmed either or both Plaintiffs in the case and for only that conduct. For example, you cannot assess punitive damages for the Defendant being a distasteful individual or business. Punitive damages are meant to punish the Defendant for this conduct

only and not for conduct that occurred at another time.

However, an employer may not be held liable for punitive damages because of discriminatory acts on the part of its managerial employees where those acts by such employees are contrary to the employer's own good faith efforts to comply with the law by implementing policies and programs designed to prevent such unlawful discrimination in the workplace.

If you find for either of the Plaintiffs, and if you further find that the Defendant did act with malice or reckless indifference to either of the Plaintiff's federally protected rights, the law allows you, in your discretion, to assess punitive damages against the Defendant as punishment and as a deterrent to others.

Finally, if you find that punitive damages should be assessed against the Defendant, you may consider the financial resources of the Defendant in fixing the amount of such damages.

Of course, the fact that I have given you instructions concerning the issue of damages should not be interpreted in any way as an indication that I believe that either Plaintiff should, or should not, prevail in this case. 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.

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. Your own recollection and interpretation of the evidence controls. What the lawyers say is not binding upon you. 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.

Notes

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.

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 VERDICT)

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.

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 or anyone else about this

case. 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.