

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CLERK
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JOSHUA HANDVERGER,)
)
Plaintiff,)
)
v.)
)
CITY OF WINOOSKI, VERMONT,)
)
Defendant.)

Case No. 5:08-cv-246

JURY CHARGE

General Instructions

Now that you have heard the evidence and arguments, it is my duty to instruct you as to the applicable law.

It is your duty as jurors to follow the law, and to apply it to the facts as you find them from the evidence presented in the courtroom. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. You are not to be concerned with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence presented during the trial.

The lawyers may have referred to some of the rules of law in their arguments. If any difference appears between the law as stated by the lawyers and the law as stated by the court in these instructions, you must follow the court's instructions.

Our judicial system requires you to carefully and impartially consider all of the evidence, follow the law, and reach a just verdict, regardless of the consequences.

Jurors as Finders of Fact/Rulings of the Court

You and you alone are the triers of the facts. Each of you, as jurors, must determine the facts for yourselves in reaching a verdict. By the rulings which I made during the course of the trial, I did not intend to indicate to you or to express my own

views about this case.

Sympathy/Prejudice

Neither sympathy nor prejudice, for or against the parties, or any other person involved with this case, should influence you in any manner in reaching your verdict. Your deliberations should be well-reasoned and impartial.

Important Case

This is an important case to the parties and the court. You should give it serious and fair consideration.

Arguments/Statements/Objections of the Attorneys

The opening statements and closing arguments of the attorneys, their questions and objections, and all other statements that they made during the course of the trial are not evidence. The attorneys have a duty to object to evidence that they believe is not admissible. You may not hold it against either side if any attorney feels it is necessary to make an objection.

Evidence in the Case

The evidence in this case consists of the sworn testimony of the witnesses, the exhibits admitted into evidence, and any stipulated facts, regardless of which party presented the evidence. When the attorneys on both sides stipulate or agree to the existence of a fact, you must, unless otherwise instructed, accept the stipulation and regard that fact as proven. You may give the stipulated fact, like any other evidence, the weight that you think it deserves.

Any evidence to which an objection was sustained or stricken by the court must be disregarded.

Evidence – Direct or Circumstantial

There are two types of evidence from which you may find the facts of this case: direct and circumstantial evidence. Direct evidence is the testimony of someone who asserts actual knowledge of a fact, such as an eyewitness or the exhibits in the trial. Circumstantial evidence is proof of a chain of facts and circumstances tending to prove or disprove an issue in the case.

For example, if a witness were to testify that he or she had seen cows in a field,

that would be an example of direct evidence that there were cows in a field. On the other hand, if a witness were to testify that he or she had seen fresh cow tracks in the field, that would be an example of circumstantial evidence that there had been cows in the field.

The law does not require a party to prove its claims or defenses by direct evidence alone, that is, by testimony of an eyewitness. One or more of the essential elements, or all of the essential elements, may be established by reasonable inference from other facts that are established by direct testimony. Circumstantial evidence may alone be sufficient to prove a claim or defense.

The law makes no distinction between the weight to be given to direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should consider all the evidence in the case and give it such weight as you think it deserves.

Credibility of Witnesses

You are the sole judges of the credibility of the witnesses, and the weight to give their testimony is up to you. In considering the testimony of any witness, you may take into account his or her ability and opportunity to observe; his or her demeanor while testifying; any interest or bias he or she may have; and the reasonableness of his or her testimony, considered in light of all of the evidence in the case. Consider also any relation each witness may bear to either side of the case, any bias or prejudice, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit a witness's testimony. Two or more persons witnessing an incident or transaction may see or hear it differently. It is your duty to reconcile conflicting testimony if you can do so.

In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or to an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

You may give the testimony of each witness such weight, if any, you think it deserves. You may believe all of the testimony of any witness, you may believe it in part and disbelieve it in part, or you may reject it altogether. You do not have to accept the testimony of any witness, even if it is uncontradicted. It is for you to say what you will believe and what you will disbelieve.

Expert Witnesses

You have heard evidence from witnesses who are known as expert witnesses. An expert witness is a person who has special knowledge, experience, training, or education in his or her profession or area of study. Because of this expertise, an expert witness may offer an opinion about one or more of the issues in the case. In evaluating expert testimony, you should evaluate an expert's credibility and statements just as you would with any other witness. You should also evaluate whether the expert witness's opinion is supported by the facts that have been proved, and whether the opinion is supported by the witness's knowledge, experience, training, or education. You are not required to give the testimony of an expert witness any greater weight than you believe it deserves just because the witness has been referred to as an expert.

Number of Witnesses

The fact that one side may have called more witnesses than the other side is of no significance. Your task is to evaluate the credibility of the witnesses, and to weigh all of the evidence.

Prior Inconsistent Statements

You may find that a witness has made statements outside of this trial that are inconsistent with the statements that the witness gave here. You may consider the out-of-court statements not made under oath only to determine the credibility of the witness and not as evidence of any facts contained in the statements. As to out-of-court statements that were made under oath, such as statements made in prior testimony, you may consider them for all purposes, including for the truth of the facts contained therein.

Personal Knowledge and Experience of Jurors

In deliberating upon your verdict, you are not expected to put aside your common sense or your own observations or experience of the general affairs of life. However, a juror having special knowledge of a subject may neither state this knowledge to fellow jurors nor act upon it himself or herself in arriving at a verdict. You must not tell your fellow jurors about matters which are based on special knowledge concerning an issue in the case that did not come from the evidence received in the courtroom.

Burden of Proof/Preponderance of the Evidence

The burden is on the party making the claim to prove each essential element of the claim by a preponderance of the evidence. This burden applies to a plaintiff's claim against a defendant and to a defendant's affirmative defense.

To “establish by a preponderance of the evidence” means to prove that something is more likely than not. In other words, a preponderance of the evidence means such evidence that, when considered and compared with that opposed to it, has more persuasive force, and produces in your minds a belief that what is sought to be proved is more likely true than not true. A preponderance of the evidence means the greater weight of the evidence. In determining whether a fact, claim, or defense has been proven by a preponderance of the evidence, you may consider the testimony of witnesses, regardless of who may have called them, and the exhibits in evidence, regardless of who may have produced or introduced them. No proof of absolute certainty is required.

Verdict Form

I will provide you with a verdict form that will guide you in making your determinations in this action. You must fill out the verdict form in accordance with these jury instructions. If there is any conflict between the verdict form and these instructions, you must follow these instructions.

Sutton, Massachusetts Sexual Harassment Claim

You heard evidence regarding a sexual harassment lawsuit involving Mr. Handverger and the Town of Sutton, Massachusetts. The court has also admitted into evidence the allegations in that lawsuit and the denial of those allegations filed in court. This evidence is offered not for the truth of the matter asserted by the parties in that lawsuit, but for the fact that a lawsuit existed at a particular point in time. It should be used for no other purpose.

Video Recordings of City Council Meetings/Statements by Attorneys in Letters and Videos/Claims Before the Court

You heard evidence in the form of recordings of two City Council meetings, at which there were many speakers. These speakers made a variety of statements that may or may not be true. The recordings were not offered for the truth of the statements contained therein, but for the fact that they were made to show that the meetings occurred and what transpired during the meetings. This includes the statements made by the various attorneys. You should not concern yourself with whether an attorney’s statement reflects an accurate statement of the law.

This same instruction applies to the statements made by the attorneys in various emails and letters. You may consider these statements for the fact that they were made and for the fact that they reflected the parties’ positions at the time, but you should not concern yourself with whether they reflect an accurate statement of the law.

Remember, in this case, you will not decide whether Mr. Handverger's employment was governed by his employment contract or by the City Charter. You will also not decide whether his employment contract or the City Charter was violated. Those issues are not before you because the only claim you will decide is Mr. Handverger's failure to accommodate his religious practices claim under Title VII of the United States Code and the Vermont Fair Employment Practices Act. The information regarding Mr. Handverger's employment contract and the City Charter has been presented to you only to provide the context in which Mr. Handverger's failure to accommodate claims arose.

Mr. Handverger's Claims – Violations of Title VII and the Vermont Fair Employment Practices Act

General Summary of the Parties' Claims

Mr. Handverger alleges that the City of Winooski discriminated against him on the basis of his religion by failing to offer him a reasonable accommodation for his religious beliefs and practices. Specifically, Mr. Handverger contends that the City of Winooski scheduled the public meeting regarding his termination on September 30, 2008 during the Jewish high holiday of Rosh Hashanah. He asserts that this presented a conflict between his religious practices and his job requirements which his employer, the City of Winooski, was required to reasonably accommodate. He further claims that he suffered a tangible employment action because he did not attend the public meeting on September 30, 2008 and that he suffered emotional distress as a result. He is asking you to award him damages for his emotional distress. It is your responsibility to decide whether Mr. Handverger has proven his claim of a failure to accommodate by a preponderance of the evidence.

The City of Winooski denies Mr. Handverger's failure to accommodate claim. It claims that Mr. Handverger's attendance at the public meeting on Rosh Hashanah was not a requirement of his employment, but was something Mr. Handverger requested and which the City of Winooski agreed to offer him. In this respect, the City of Winooski contends there was no actual conflict between Mr. Handverger's religious practices and the requirements of his job. The City of Winooski further asserts that it offered Mr. Handverger a reasonable accommodation for his religious beliefs and practices and that he rejected the reasonable accommodation and refused to cooperate in finding a mutually acceptable reasonable accommodation. The City of Winooski contends that Mr. Handverger cannot show that he suffered any tangible employment action as a result of his failure to attend the September 30, 2008 meeting because had he attended the meeting, the same outcome would have resulted. In addition, the City of Winooski claims that any emotional distress Mr. Handverger suffered was caused by the September 22, 2008 meeting which he attended, and not by his failure to attend the September 30,

2008 meeting.

The City of Winooski also asks you to consider its affirmative defense of rescission. It claims that had it known of the Sutton, Massachusetts sexual harassment lawsuit pending against Mr. Handverger in the hiring process, it would have never have hired him as its City Manager. Mr. Handverger counters that he disclosed this lawsuit in the hiring process and that when it became public in 2008, the City of Winooski did not terminate his employment. He also asserts that he did nothing to prevent the City of Winooski from discovering the lawsuit and that he was truthful in his statements regarding his reasons for leaving his former employment. He therefore asserts that the City of Winooski is not entitled to rescission of his employment contract.

Essential Elements of Mr. Handverger's Failure to Accommodate Claims

Mr. Handverger asserts that the City of Winooski failed to accommodate his religious beliefs and practices and thereby violated a federal law known as "Title VII." Title VII, 42 U.S.C § 2000e-2(a), provides that:

It shall be an unlawful employment practice for an employer—

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

In addition, Title VII, 42 U.S.C. § 2000e(j), provides:

The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

Under Title VII, it is therefore an unlawful employment practice for an employer not to make reasonable accommodations for the religious practices of employees and

prospective employees unless the employer shows that to offer a reasonable accommodation would impose an undue hardship on the conduct of its business. In this case, the City of Winooski does not make a claim of undue hardship.

Mr. Handverger also asserts that the City of Winooski violated a state law, called the Vermont Fair Employment Practices Act, 21 V.S.A. § 495(a). This law provides that:

(a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, or physical or mental condition:

(1) For any employer, employment agency, or labor organization to discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified disabled individual

I instruct you that the same elements and definitions apply to claims under Title VII and the Vermont Fair Employment Practices Act. I will now provide you with specific instructions on these elements and definitions.

In order for Mr. Handverger to establish his claim of failure to accommodate against the City of Winooski under Title VII and the Vermont Fair Employment Practices Act, Mr. Handverger must prove by a preponderance of the evidence the following four essential elements:

1. Mr. Handverger held a bona fide religious belief, here the Jewish holiday Rosh Hashanah, that conflicted with an employment-related activity with the City of Winooski, here, the September 30, 2008 public hearing regarding the termination of his employment;
2. Mr. Handverger informed the City of Winooski of his religious beliefs and practices and the resulting conflict with the public hearing;
3. Mr. Handverger suffered a tangible employment action by the City of Winooski; and
4. Mr. Handverger's damages were caused by the City of Winooski's failure to reasonably accommodate his religious practices and beliefs.

Mr. Handverger must first prove by a preponderance of the evidence that he held a sincere or genuine religious belief. Religion is defined to include all aspects of

religious observance and practice, as well as belief.

Mr. Handverger must next prove by a preponderance of the evidence that there was a conflict between his religious practices or beliefs and an employment related activity. In this respect, Mr. Handverger must show that attending the September 30, 2008 public meeting was either required by the City of Winooski or was an expectation of his employer such that if he did not attend the meeting his employment or his status as an employee would be adversely affected.

As the third element of his claim, Mr. Handverger must prove by a preponderance of the evidence that he suffered a tangible employment action. A tangible employment action is a change in the terms and conditions of employment or in employment status, including, but not limited to, hiring, firing, failing to promote, discipline, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.

The final element that Mr. Handverger must prove by a preponderance of the evidence is causation, that is, you must determine whether the emotional distress Mr. Handverger alleges was caused by the City of Winooski's failure to accommodate his religious practices and beliefs. I will instruct you on this issue in the context of my instructions on damages. You must, however, first determine whether the City of Winooski offered Mr. Handverger a reasonable accommodation. If it did so, it has not violated Title VII or the Vermont Fair Employment Practices Act and you must return a verdict in its favor. If you reach this conclusion, you will not address the issue of causation and damages.

Defense of Reasonable Accommodation

The City of Winooski has asserted the defense that it offered Mr. Handverger a reasonable accommodation that would have eliminated any conflict with his employment and that he rejected it.

The law requires that an employer provide a reasonable accommodation once an employee's religious beliefs and practices are known to conflict with the employee's obligations to his or her employer. However, the City of Winooski need not offer the accommodation Mr. Handverger preferred or the most beneficial accommodation to him. This is because the law only requires that the City of Winooski offer a reasonable accommodation.

You must therefore consider whether the City of Winooski offered Mr. Handverger any accommodation for his religious beliefs and practices, and if so, whether the accommodation offered to Mr. Handverger was reasonable.

In making the determination of whether the City of Winooski offered Mr. Handverger a reasonable accommodation, you should consider and weigh the needs of an employee's religious practices with the needs of an employer's business. You should also consider the reasonableness of the conduct of both parties under the circumstances of this case.

You should consider whether the offer of accommodation would have eliminated the conflict between Mr. Handverger's religious beliefs and practices and the City of Winooski's employment obligations. Such an offer might or might not be reasonable, but that is for you, the jury, to determine.

You also should consider whether the offer of accommodation would have required Mr. Handverger to modify his religious beliefs and practices in order to satisfy his employment obligations or whether the offer of accommodation would have forced him to choose between his employment and his religion. An employee is not required to modify his or her religious beliefs and practices in order to satisfy his or her employment obligations. An offer of accommodation cannot force an employee to choose between employment and religion.

You should consider whether the offer of accommodation would have imposed on Mr. Handverger a significant work-related burden that is without justification or would have caused him to suffer an inexplicable diminution in his employee status or benefits. An offer of accommodation cannot impose on an employee a significant work-related burden that is without justification, and an offer of accommodation cannot punish an employee in terms of his or her employment compensation or benefits.

In formulating a reasonable accommodation, both the employee and the employer should remain flexible with an eye towards achieving a mutually acceptable adjustment.

It is for you, the jury, to determine whether the City of Winooski offered Mr. Handverger a reasonable accommodation for his religious beliefs and practices in light of all the facts and circumstances in this case.

If you find that the City of Winooski failed to offer Mr. Handverger a reasonable accommodation, you must next consider the City of Winooski's affirmative defense of rescission. If you find that the City of Winooski offered Mr. Handverger a reasonable accommodation, then you must return a verdict for the City of Winooski and you will proceed no further in your deliberations.

The City of Winooski's Affirmative Defense of Rescission

The City of Winooski has asserted an affirmative defense of rescission. An affirmative defense is a claim that, if true, will defeat all or part of a plaintiff's claim. The City of Winooski has the burden of proving its affirmative defense by a preponderance of the evidence. You must consider this affirmative defense only if you find in Mr. Handverger's favor on his claims of a failure to accommodate his religious beliefs and practices. If you find in favor of the City of Winooski on Mr. Handverger's claims, the City of Winooski's affirmative defense must not be addressed and your verdict is for the City of Winooski.

If proven, the affirmative defense of "rescission" provides that a party induced into an employment contract by a fraudulent or material misrepresentation can rescind or, in other words, cancel the employment contract. A material misrepresentation can occur if a person fails to disclose information that he or she was obligated to disclose.

In this case, the City of Winooski alleges that Mr. Handverger failed to disclose to the City of Winooski during the hiring process the existence of a sexual harassment lawsuit filed by a town employee for Sutton, Massachusetts. The City of Winooski claims that Mr. Handverger's failure to disclose the lawsuit was either fraudulent in that there was a specific intent to deceive the City of Winooski or constituted a material misrepresentation regarding the reason why he left his former employment which would have changed the City of Winooski's decision to hire him had it been known. Information is "material" if its disclosure was important and was likely to affect the City of Winooski's decision whether or not to hire Mr. Handverger.

To prove the affirmative defense of rescission, the City of Winooski must prove the following essential elements by a preponderance of the evidence:

1. That Mr. Handverger made a fraudulent or material misrepresentation in the course of applying for employment with the City of Winooski regarding the reason why he left his former employment;
2. That the City of Winooski reasonably relied upon the misrepresentation and was induced by it to enter into an employment contract with Mr. Handverger; and
3. That had the City of Winooski known the true information, it would not have hired Mr. Handverger as its City Manager.

A misrepresentation is an assertion that is not in accord with the facts. Here, the City of Winooski asserts that Mr. Handverger failed to inform the City of Winooski of

the sexual harassment lawsuit and gave false answers regarding why he left his former employment. The non-disclosure of a fact known to Mr. Handverger is equivalent to an assertion that the fact does not exist only if:

- a) Mr. Handverger knew that disclosure of the fact was necessary to prevent some previous assertion from being a fraudulent or material misrepresentation; or
- b) Mr. Handverger knew that disclosure of the fact would correct a mistake of the City of Winooski concerning a basic assumption on which the City of Winooski entered into the employment contract; or
- c) Mr. Handverger, by his words and conduct, led the City of Winooski to believe that he had made a full disclosure of the facts that he knew for the purpose of deceiving the City of Winooski and preventing the City of Winooski from investigating further.

A misrepresentation is fraudulent when made with knowledge of its falsity. A misrepresentation induces a party's agreement to a contract if it substantially contributes to the decision to enter into the contract.

Lastly, the misrepresentation must have been actually relied on and that reliance must be reasonable. It is for you, the jury, to determine whether reliance on the misrepresentation was reasonable, but you should consider whether the misrepresentation related to a matter peripheral to the employment contract, whether the misrepresentation was one that would not be expected to be taken seriously, or whether the misrepresentation was readily verifiable.

If you find that the City of Winooski has proven by a preponderance of the evidence the essential elements of an affirmative defense of rescission, then you must return a verdict for the City of Winooski. If you do not find in the City of Winooski's favor on its affirmative defense of rescission, you must next consider the issue of damages.

General Instructions on Causation and Damages

The fact that I have instructed you on the issue of causation and damages should not be considered as the court's opinion that any party has established any other element of its claims or defenses. That is solely for you to decide.

You must consider the issue of causation before you consider an award of damages. In this case, Mr. Handverger must prove by a preponderance of the evidence

that there is some direct relationship between the injuries he claims to have suffered and the failure to accommodate which he alleges caused them. Links between an injury and the conduct alleged to have caused it that are too remote, or which are purely contingent on other facts, or are indirect are not sufficient. Mr. Handverger must therefore prove by a preponderance of the evidence that the City of Winooski's failure to accommodate led directly to his emotional distress.

Mr. Handverger is seeking a damages award that includes compensatory damages for the lost opportunity to have a public hearing and the emotional distress he suffered as a result of the City of Winooski's alleged failure to accommodate his religious beliefs and practices. He is seeking emotional distress damages for pain, suffering, inconvenience, mental anguish, humiliation, and/or loss of enjoyment of life that he claims he suffered as a result of the City of Winooski's failure to accommodate.

Compensatory Damages

If you find the City of Winooski failed to offer Mr. Handverger reasonable accommodation for his religious beliefs and practices, then you must determine an amount that is fair compensation for Mr. Handverger's damages.

You may award compensatory damages only for emotional distress injuries that Mr. Handverger proves were caused by the City of Winooski's failure to accommodate. The damages that you award must be fair compensation—no more and no less.

You may award damages for any pain, suffering, inconvenience, mental anguish, humiliation, and/or loss of enjoyment of life that Mr. Handverger experienced as a consequence of the City of Winooski's failure to accommodate his religious beliefs and practices. No evidence of the monetary value of such intangible things as pain and suffering has been, or need be, introduced into evidence. There is no exact standard for fixing the compensation to be awarded for these elements of damage. The law does not require Mr. Handverger to prove the amount of his losses with mathematical precision.

In determining the amount of any damages that you decide to award, you should be guided by common sense. You must use sound judgment in fixing an award of damages, drawing reasonable inferences from the facts in evidence. You may not award damages based on sympathy, speculation, or guess work. Any award you make should be fair in light of the evidence presented at the trial.

In awarding compensatory damages, you are not to consider awarding damages for the amount of wages Mr. Handverger would have earned, either in the past or in the future had he continued his employment with the City of Winooski.

Nominal Damages

If you find in Mr. Handverger's favor but you find that his damages have no monetary value, then you must return a verdict for Mr. Handverger in the nominal amount of one dollar.

Mitigation of Damages

Under the law, a party seeking an award of damages must make reasonable attempts to minimize or eliminate those damages. In other words, a party is not entitled to recover damages to the extent he or she could have avoided or otherwise reduced those damages.

The City of Winooski must prove by a preponderance of the evidence that Mr. Handverger failed to mitigate his damages. If you find that Mr. Handverger has failed to mitigate his damages, your award must not compensate Mr. Handverger for his failure to mitigate his damages, and you must subtract the monetary amount of any such failure from your award.

Aggravation of Preexisting Condition

In calculating Mr. Handverger's damages, keep in mind that Mr. Handverger cannot recover for any condition that existed before the decisions and actions he contends caused his damages. He can only recover for damage due to enhancement or aggravation of a preexisting condition, and not the condition itself.

In this case, Mr. Handverger contends he is entitled to compensation for the aggravation of an existing condition of emotional distress that he was already experiencing. If you find that Mr. Handverger did suffer from an existing condition of emotional distress, and you further find there was such an aggravation of the existing condition caused by the failure to accommodate, then you should determine what portion of Mr. Handverger's condition resulted from the aggravation and you should then compensate Mr. Handverger only for that aggravation. In essence, you should compensate Mr. Handverger only to the extent you find that he was further injured by the City of Winooski.

Speculative and Duplicative Damages Not Permitted

You may not award damages that are speculative or merely possible in nature.

You should be careful not to award damages for one item that duplicates an award for another item. In other words, a party is only entitled to one recovery for his or her

damages. Your award in all respects must be fair and reasonable in light of all the evidence that you find worthy of belief and all the reasonable inferences to be drawn from such evidence.

Income Taxes and Interest

If you find for Mr. Handverger and award damages, you must not consider any effect of federal or state income tax in deciding the amount of the damages award.

If you find for Mr. Handverger and award damages, you must not calculate interest as part of the damages award.

Court Costs and Attorney's Fees

If you find Mr. Handverger is entitled to any damages, you must not include in your award any sum for costs or attorney's fees. These are matters for the court.

Concluding Instructions

Jury Deliberations/Unanimous Verdict

The verdict must represent the considered judgment of each juror. In order to return a verdict, you must all agree. Your verdict must be unanimous.

You must consult with one another. You must try to reach an agreement if you can do so without sacrificing your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. Do not hesitate to re-examine your views and change your opinions if you are convinced they are wrong. But do not surrender your honest opinion as to the weight or effect of evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

If you need to communicate with me, you should send a note through the Court Officer, signed by your foreperson. You must not discuss with the court or with any other person what is said in deliberations, and any note you send to the court must not include this information. In other words, you may ask the court questions but, in doing so, you must not reveal what the jurors are thinking or saying. You must not tell anyone how the jury stands numerically or otherwise until after you have reached a unanimous verdict and you have been discharged. Even then you need not speak to anyone about this case unless you want to.

When you have reached a verdict, tell the Court Officer that you have reached a

verdict, but do not tell the Officer what the verdict is. You will then be brought into the courtroom where I shall ask you if you have reached a verdict, and, if you have, what it is.

Juror Note Taking

During the trial, you have been provided with pencil and paper, and some of you have taken notes. As I explained at the beginning of the trial, all jurors should be given equal attention during the deliberations regardless of whether or not they have taken notes. Any notes you have taken may only be used to refresh your memory during deliberations. You may not use your notes as authority to persuade your fellow jurors as to what a witness did or did not say. In your deliberations you must rely upon your collective memory of the evidence in deciding the facts of the case. If there is any difference between your memory of the evidence and your notes, you may ask that the record of the proceedings be read back. If a difference still exists, the record must prevail over your notes. I will now describe the process for a read back.

Read Back of Evidence

If, during your deliberations, you are unable to recall with any degree of accuracy, a particular part of the testimony, or part of these instructions, you may do the following:

1. Write out your question, and have the foreperson sign it;
2. Knock on the door of the jury room; and
3. Deliver your note to the Court Officer, to give to me.

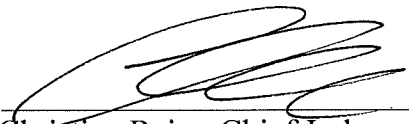
After the attorneys have been consulted, and the record has been reviewed, I shall decide what action to take. I will tell you my ruling.

Selection and Duties of a Foreperson

I select _____ to act as your foreperson. The foreperson acts as a chairperson or moderator. It is your duty to see that discussions are carried out in a sensible and orderly manner and to see that the issues submitted for the jury's decision are fully and fairly discussed, and that every juror has a chance to say what he or she thinks upon every question. When ballots should be taken, you will see that it is done. You will act as the jury's spokesperson in the courtroom. In all other respects, the foreperson is the same as every other juror. His or her vote or opinions do not count more or less than those of his or her fellow jurors.

Ladies and gentlemen of the jury, you may now take the case and retire to begin your deliberations.

Dated at Rutland, in the District of Vermont, this 1st day of November, 2013.



Christina Reiss, Chief Judge
United States District Court