UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

John Wesnefski Plaintiff,	:	
v.	:	File No. 2:99-CV-298
Rutland Plywood Corporation., Defendant.	:	

CHARGE TO THE JURY

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to give you instructions concerning the law that applies to this case:

General Instructions

It is your duty as jurors to follow the law as stated to the facts which you find from the evidence. Your final role here is to pass upon and decide the fact issues of the case. You are the sole and exclusive judges of the facts. You pass upon the weight of the evidence, you determine the credibility of the witnesses, you resolve such conflicts as there may be in the evidence, and you draw such inferences as may be warranted by the facts as you find them. I will shortly define the word "evidence" for you and instruct you on how to assess it, including how to weigh the credibility or, to put it another way, the believability, of witnesses.

You are not to consider any one instruction that I give you as alone stating

the law, but you should take into account all of 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 other view of the law than that given here in these instructions and anything other than the evidence presented in this case.

You are to discharge your duty as jurors in an attitude of complete fairness and impartiality. You should weigh the evidence calmly and deliberately and without the slightest trace of sympathy, bias, or prejudice for or against either party.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. A corporation is entitled to the same fair trial at your hands as is a private individual. The law is no respecter of persons, and all persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice.

When a corporation is involved, of course, it may act only through natural persons as its agents or employees; and, in general, agents or employees of a corporation may bind the corporation by their acts and declarations made while acting within the scope of their authority delegated to them by the corporation, or within the scope of their duties as employees of the corporation. In this regard, you

should consider any act or omission of Rutland Plywood Corporation employees to be the act or omission of Rutland Plywood.

It is the sole province of the jury to determine the facts in this case. By these instructions, I do not intend to indicate in any way how you should decide any question of fact. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your findings of fact. I recognize that a judge can have significant influence on a jury. If you think you have perceived some opinion of how I think this case should be decided, I want you not to consider that at all. I am merely the judge here. I am passing on the objections and upon the law. You are the judges of fact . It is your decision and not mine.

Evidence

As I have said earlier, it is your duty to determine the facts, and in doing so, you may consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record. Remember that any statements, objections, or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in doing so, to call your attention to certain facts or inferences that might otherwise go unnoticed. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls the case. What the lawyers say is not evidence and is not binding on you.

While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in light of the common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts as have been established by the testimony and evidence in the case.

The law recognizes two types of evidence: direct and circumstantial. Direct evidence is provided when, for example, people testify to what they saw and heard themselves; that is, something which they have knowledge by virtue of their senses. Circumstantial evidence consists of proof of facts and circumstances from which, in

terms of common experience, one may reasonably infer the ultimate fact sought to be established.

For example, if a person goes to bed at night and the sidewalk outside his home is dry and he wakes up in the morning to find puddles on his sidewalk, he can reasonably infer that it rained during the night. The fact that he did not see or hear the rain, renders the puddles circumstantial evidence of rain. If he were to wake up in the middle of the night and see the rain out his window, the evidence of rain would be direct.

Circumstantial evidence, if believed, is of no less value than direct evidence. The law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

An act or omission is "knowingly" done, if voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Credibility of Witnesses

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness or by the manner in which the witness testifies or by the character of the witness or by evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive, state of mind, demeanor or manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified and whether the witness impresses you as having an accurate recollection of these matters. Consider also any relationship 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 give you cause to discredit the testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently. Innocent mis-recollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider

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

A witness may be discredited or impeached by contradictory evidence, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness's present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you think it deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have the right to distrust such witness's testimony in other particulars and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

After making your judgment, you must give the testimony of each witness the weight, if any, that you may think it deserves.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of a fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

Preponderance of the Evidence

In a civil action such as this, the burden is on the Plaintiff to prove every essential element of his claim by a preponderance of the evidence. A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has a more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a preponderance of the evidence merely means to prove that the claim is more likely so than not so.

In determining whether a fact in issue has been proved by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received into evidence regardless of who may have produced them. If the proof should fail to establish an essential element of the Plaintiff's claim by a preponderance of the evidence, you should find for the Defendant as to that claim.

In this case, the Plaintiff claims that the Defendant terminated him in violation of his contract of employment, asserting breach of contract and promissory estoppel claims; and terminated him because of his disability in violation of : the Americans with Disabilities Act (also known as the ADA), the Vermont Fair Employment Practices Act (also known as FEPA), and the Vermont Workman's Compensation Act's anti-retaliatory provisions . The Plaintiff seeks compensatory

and punitive damages. The jury must consider each claim separately and determine if the Plaintiff has proved each element of the individual claims by a preponderance of the evidence.

Stipulations of Fact

As I have stated, the members of the jury are the finders of fact in this case. However, the parties to a case can stipulate to certain facts that you must find as established regardless of the evidence or testimony you have seen or heard. Therefore, you must find the following facts, that have been stipulated by the Plaintiff and the Defendant in this case, to be established and include them in your deliberations:

(1) The Plaintiff is a resident of Castleton, Vermont.

(2) The Defendant is a Vermont corporation with a principal place of business in Rutland, Vermont.

(3) The Plaintiff was hired by the Defendant as a foreman-in-training on December 12, 1994.

(4) The Plaintiff was injured in an industrial accident while working at the Defendant's factory on February 2, 1996.

(5) As a result of the accident, the Plaintiff lost the functional use of his right arm and became disabled.

(6) The Plaintiff returned to work part time in or about August 1996, and full time in October 1996.

(7) During the time the Plaintiff worked for the Defendant following his accident, he was medically restricted from performing work with his injured arm, and from working outdoors in temperatures of less than 50 degrees Fahrenheit.

(8) The Plaintiff worked in several jobs following his return to work:
Foreman 1st shift veneer department: 10/24/96 - 2/5/97;
Quality Control: 2/5/97-6/97
Casegoods Department: 6/97-10/97;
Foreman - glue department, 2nd shift: 10/97-4/6/98.

(9) The Plaintiff was discharged from his position by the Defendant on April 10, 1998.

(10) At the time the Plaintiff was discharged, the Defendant had in place an Employee Handbook issued May 1994.

Breach of Contract Claim

The Plaintiff claims that the provisions of Rutland Plywood Corporation's Employee Handbook and other company policies of which he may have been informed set forth certain promises which formed a contract between him and the Defendant, and that he relied on those promises. The Plaintiff claims that under the company policies of which he was informed, the Defendant promised a specific disciplinary process, and that because he did not receive this process, the Defendant breached the contract. The Plaintiff also argues that the while the company policies list certain infractions of the rules for which he could be fired immediately, without following the disciplinary process, profanity was not on that list of infractions. The Plaintiff claims that his termination for profanity was therefore in violation of the company policies of which he was informed and a breach of contract. The Plaintiff further argues that he relied on these promises, and the Defendant's failure to abide by them caused him damages.

In its defense, the Defendant claims, first, that its company policies are contained in the Employee Handbook, orientation video and posted in the workplace; second, that its policies did not modify the at-will employment relationship between the parties and that the Plaintiff was therefore an employee at will; third, that it had a specific and clear policy known to the Plaintiff that certain conduct, such as exhibited on April 6, 1998 could result in immediate termination

without prior counseling or warning; and fourth, that it had policies allowing for immediate discharge.

Under Vermont law, an employment relationship having no specified term of duration may be terminated by either the employee or the employer upon notice to the other at any time. This is known as "at-will" employment. However, even in an at-will employment relationship, the employer's rights are not unlimited. Generally, there are two reasons which would modify the at-will employment relationship. The first is that it is unlawful for an employer to discipline an employee in violation of the law. The second means, addressed in this Count, is if the employer makes some representation or promise.

To prove his breach of contract claim, the Plaintiff must first prove that his employment contract with the Defendant provided that he would be terminated only for certain reasons, and with regard to the conduct he engaged in, only after certain warnings were given to him.

Company policies may become part of an employment contract either by express agreement, oral or written, or under certain other circumstances. Specifically where an employer establishes policies and practices that it makes known to its employees and that are intended to govern the employment relationship, and where the employee has a legitimate expectation these policies and practices will be followed, the policies and practices in question become an

obligation of the employer that the employer must follow. In other words, the policies and practices in question become part of the contract of employment. If the Defendant had discretion in whether or not to exercise any authority, then it was not obligated to do so if it chose not to.

If the employer fails to follow the policies and practices, then the employer has breached its contract of employment with the employee and the employer is liable to the employee for the damages suffered by the employee because of the breach.

To determine whether the Plaintiff had a legitimate expectation that the Defendant would be bound by the words of the company policies, you are to look to objective manifestations rather than subjective intent. An employer is not bound by an employee's unsupported private or personal or subjective expectation not reasonably communicated by the employer's own words. You may consider the distribution of the company policies, its subject matter, the situation and relationship of the parties, that is, the Defendant and its employees, and the sense in which, taking all these things into account, the words of the company policies would be commonly understood.

It is for you to determine whether, under all the circumstances of this case, the provisions of the company policies regarding discipline and discharge established policies and practices that the Defendant made known to its employees

and which the Defendant intended to govern the employment relationship of its employees and that its employees, including the Plaintiff, had a legitimate expectation would be followed.

To succeed on his breach of contract claim, the Plaintiff has the burden of proving each of the following elements by a preponderance of the evidence:

(1) That it was a part of the Plaintiff's contract of employment with the Defendant that he would be discharged only for just cause, only consistent with company policies, and then only after certain warnings were given to him;

(2) That the Plaintiff was not discharged for just cause or even if he was discharged for just cause, it was not consistent with company policies, or required warnings were not extended to him prior to his being discharged; and

(3) That the Plaintiff suffered damages that were a direct result of his wrongful discharge.

Promissory Estoppel

Under Vermont law, promissory estoppel may modify an otherwise at-will employment relationship and provide a remedy for wrongful discharge. The elements of promissory estoppel require a promise which the promiser (one who makes a promise) should reasonably expect to induce action or inaction on the part of the promisee (one to whom the promise is made) and which does induce such action or inaction. The action or inaction taken in reliance upon the promise must be of a definite and substantial character. Such a promise is binding if injustice can be avoided only by enforcement of that promise.

The Plaintiff contends that the Rutland Plywood company policies sets forth enforceable promises by the Defendant to the Plaintiff with regard to what an employee could expect in the disciplinary process, including a series of warnings prior to his being discharged, and stated reasons for which his employment could be terminated. The Plaintiff further contends that he relied upon these promises.

The Plaintiff also claims that he reasonably relied upon the Defendant's promise that he would continue to be employed despite his disability and that because of this promise, he did not seek vocational rehabilitation services to which he was entitled.

The Plaintiff claims that his reliance was detrimental to him and that the Defendant breached the promises made to him regarding discipline and continued

employment, causing him to suffer damages.

If you find that the Plaintiff has established that Defendant has made certain promises of a definite and substantial character, and that he took action or did not act in reliance upon those promises to his detriment, then you must find in favor of the Plaintiff on his promissory estoppel claim.

To succeed on his promissory estoppel claim, the Plaintiff has the burden of proving each of the following elements by a preponderance of the evidence:

(1) That the Defendant promised him that he would be discharged only for just cause and then only after certain warnings were given to him, in an manner consistent with company policies; or that he was promised he would not be discharged even though he was disabled.

(2) That the Plaintiff was not discharged for just cause or that he was discharged even though he was disabled.

(3) That the Plaintiff suffered damages that were a direct result of the Defendant's breach of promise.

The Americans with Disabilities Act Claim

It is unlawful for an employer to intentionally discriminate against a qualified individual with a disability because of that person's disability. The Plaintiff claims that the Defendant terminated his employment because he had a disability. The Defendant denies this charge.

The Plaintiff has asserted discrimination claims under both federal and state law. I will instruct you on the elements of his federal claim first. As you listen to these instructions, have in mind that the terms that have been used have a particular legal meaning. I will explain each of the legal terms to you as we proceed.

Under the Americans with Disabilities Act, also known as the ADA, "[n]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment."

To find that the Defendant has violated the ADA, the Plaintiff must prove by a preponderance of the evidence that:

(1) He is a qualified person with a disability.

(2) The Defendant discriminated against the Plaintiff, that is, the fact that the Plaintiff was a qualified person with a disability was a motivating factor in the Defendant's decision to terminate the Plaintiff.

(3) As a direct result of the Defendant's intentional discrimination, the Plaintiff sustained damages.

The term "qualified individual with a disability," as used in these instructions, means an individual with a disability who can perform the essential functions of the employment position which the Plaintiff holds. In this case, it is undisputed that the Plaintiff had a disability as that term is defined in the ADA.

Again, in order to establish that he is a qualified disabled individual, the Plaintiff must establish that he has a disability and that he can perform the essential functions of the employment position. The term "essential functions of an employment position," as used in these instructions, means the fundamental job duties of the employment position the Plaintiff holds. The term "essential functions" do not include the marginal functions of the position. In this case, it is agreed that the "essential functions" of the foreman's position at Rutland Plywood Corporation do not include the need to perform physical labor.

You may, along with all the other evidence in the case, consider the following evidence in determining the essential functions of an employment position: the employer's judgment as to which functions of the job are essential; written job descriptions prepared for advertising or used when interviewing applicants for the job; the amount of time spent on the job performing the function in question; the consequences of not requiring the person to perform the function; the work experience of persons who have held the job; and/or the current work experience of persons in similar jobs.

The Defendant claims that it has made a good faith effort to reasonably accommodate the Plaintiff's disability. The term "reasonable accommodation" as used in these instructions means making modifications to the work place which allows a person with a disability to perform the essential functions of the job or allows a person with a disability to enjoy the same benefits and privileges as an employee without a disability.

Your verdict should be for the Defendant on this count if the Defendant has proven to you, by a preponderance of the evidence, that:

(1) The Plaintiff informed the Defendant that reasonable accommodations, as defined in these instructions, were needed because of the Plaintiff's disability; and

(2) The Defendant made a good faith effort, in consultation with the Plaintiff, to identify and make a reasonable accommodation that would provide the Plaintiff with an equally effective opportunity at the work place;

In summary, the Plaintiff has established his claim only if he can show by a preponderance of the evidence that he was qualified to perform the essential functions of the job; that the Defendant did not provide reasonable accommodations to the Plaintiff, and that the Plaintiff's disability was a motivating factor in the Defendant's decision to terminate him.

Vermont Fair Employment Practice Act Claim

Vermont's Fair Employment Practices Act also prohibits discrimination on the basis of a person's disability. It provides that "[i]t shall be [an] unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular physical or mental condition... [f]or any employer... to discriminate against... a qualified individual with a disability."

You are to decide whether the Defendant discriminated under Vermont law against the Plaintiff because of his disability. There is a three-part test which you must apply to reach this conclusion. First, the Plaintiff must establish the following:

(1) He was a qualified person with a disability;

(2) The Defendant intentionally discriminated against him; and

(3) As a direct result of the Defendant's intentional discrimination, the Plaintiff sustained damages.

A "qualified individual with a disability" means an individual with a disability who is capable of performing the essential functions of the job or jobs in question with reasonable accommodation to his disability. "Reasonable accommodation" under Vermont law means the changes and modifications which can be made in the structure of a job or in the manner in which a job is performed. Reasonable accommodation may include job restructuring, part-time or modified work schedules, or acquisition or modification of equipment or devices and other similar actions.

The second element requires the Plaintiff to prove that Defendant intentionally discriminated against him because of his disability.

If you find that the Plaintiff has proved these three elements by a preponderance of the evidence, you must enter a verdict for the Plaintiff on his discrimination claim under Vermont's Fair Employment Practices Act.

The Defendant claims that it has made a good faith effort to reasonably accommodate the Plaintiff's disability. The term "reasonable accommodation" as used in these instructions means making modifications to the work place which allows a person with a disability to perform the essential functions of the job or allows a person with a disability to enjoy the same benefits and privileges as an employee without a disability.

Your verdict should be for the Defendant on this claim if the Defendant has proven to you, by a preponderance of the evidence, that:

(1) The Plaintiff informed the Defendant that reasonable accommodations, as defined in these instructions, were needed because of the Plaintiff's disability; and,

(2) The Defendant made a good faith effort, in consultation with the Plaintiff, to identify and make a reasonable accommodation that would provide the Plaintiff with an equally effective opportunity in the work place;

The Vermont's Worker Compensation Act Retaliation Claim

Under Vermont law, an employer may not discriminate against an employee for filing a worker's compensation claim or requesting workman's compensation benefits. The Plaintiff claims that his employment was terminated in part because he requested vocational rehabilitation services that he claims is a protected activity under the Act. The Defendant denies this claim for the same reason as it denies any discrimination. The Defendant claims the Plaintiff was fired for a legitimate non-discriminatory reason.

To find for the Plaintiff under the Worker's Compensation Act, you must find that the Plaintiff has established by a preponderance of the evidence :

(1) That he was engaged in protected activity;

(2) That the Defendant was aware of that activity;

(3) That the Plaintiff suffered an adverse employment decision;

(4) That there was a causal connection between the protected activity and the adverse employment decision.

Regardless of whether there is direct or circumstantial evidence, the Plaintiff need not prove that this disability was the sole factor behind the termination decision. He is also not required to prove that the reasons given by the company for its actions are false.

Instead, he must prove that disability was one of the determining factors in the Defendant's decision. Therefore, even if you should conclude that the Plaintiff's

disability was not the only factor which led to his termination, if it was a factor which affected the ultimate outcome, you should find in the Plaintiff's favor. Your finding that disability was one of the determinative factors need not depend on direct evidence, but may be inferred from a totality of the circumstances.

Damages

The Plaintiff must prove, by a preponderance of the evidence, the amount of damages to which he is entitled. You may include only the damages the Plaintiff has proven by a preponderance of the evidence. You may not award speculative damages or damages based on sympathy.

The Plaintiff has only one time in court to recover damages for his termination at Rutland Plywood Corporation.

Of course, the fact that I am giving you instructions concerning the issue of the Plaintiff's damages should not be an indication that I believe the Plaintiff should, or should not prevail in this case.

Compensatory Damages

You may award compensatory damages only for injuries that the Plaintiff proves to you were caused by the Defendant's allegedly wrongful conduct. The damages that you award must be fair compensation, no more and no less.

You may award compensatory damages, based on the evidence introduced at trial for pecuniary losses. The purposes of damages is to award just and fair compensation for the loss, if any, which resulted from the Defendant's alleged violation of the Plaintiff's rights. Compensatory or actual damages seek to make the party whole - that is to compensate the Plaintiff for the damage, if any, that the Plaintiff has suffered as a result of any discriminatory action by the employer. Back pay refers to the accrued wages to which the employee may be entitled. Front pay prospectively pays the Plaintiff for wages he would have earned but for the alleged discrimination.

An award of future damages necessarily includes a monetary payment to be made now for a loss that the Plaintiff will not actually suffer until some future date. If you should find that the Plaintiff is entitled to future damages, including future earnings, then you must determine the present value or worth, in dollars, of such future damages.

If you award damages for loss of future earnings, you must consider two (2) particular factors:

(1) You should reduce any award by the amount of the expenses that the Plaintiff would have incurred in making those earnings;

(2) You must reduce any award to its present value by considering the interest that the Plaintiff could earn on the amount of the award if he made a relative risk-free investment.

The reason you must make this reduction is because an award of an amount representing future loss of earnings is more valuable to the Plaintiff if he receives it today than if he received it in the future when he would otherwise have earned it. It is more valuable because the Plaintiff can earn interest on it for the period of time between the date of the award and the date he would have earned the money. Thus, you should decrease the amount of any award for loss of future earnings by the amount of interest that the Plaintiff can earn on that amount in the future. Your calculation of future damages should consider not only the earnings the Plaintiff might reasonably have expected to receive from the Defendant, but also the earnings he can reasonably expect to receive from future employment.

You must not award compensatory damages more than once for the same injury. If the Plaintiff prevails on more than one of his claims, and establishes a dollar amount for his injuries, you must not award him any additional compensatory damages on each claim. However, if distinct injuries are attributed to separate claims, then you must compensate the Plaintiff fully for all of his injuries.

In determining the amount of any damages that you decide to award, you should be guided by dispassionate common sense. You must use sound discretion

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. On the other hand, the law does not require that the Plaintiff prove the amount of his losses with mathematical precision, but only with as much definiteness and accuracy as circumstances permit.

Punitive Damages

If you find that the Plaintiff is entitled to recover actual damages, only then may you consider whether punitive damages should be allowed. In making an award of punitive damages, you should consider that the purpose of an award of punitive damages is, first, to punish the Defendant for shocking, egregious, malicious or recklessly indifferent conduct, and second, to deter the Defendant and others from engaging in similar conduct in the future.

In this case, you may award punitive damages if you find that the Defendant engaged in a discriminatory practice against the Plaintiff with malice or reckless indifference to the rights of the Plaintiff.

The Plaintiff must prove by a preponderance of the evidence that the Defendant's conduct manifested personal ill will or that its conduct was carried out under circumstances evidencing insult or oppression. Or, the Plaintiff must show by a preponderance of the evidence that the Defendant's conduct showed a reckless and wanton disregard of the Plaintiff's rights.

If you determine that the Defendant's conduct justifies an award of punitive damages, you may award an amount of punitive damages which all jurors agree is proper.

Deliberation and Verdict

You have been permitted to take notes during trial for use in your deliberations. You may take these notes with you when you retire to deliberate. They may be used to assist your recollection of the evidence, but your memory, as jurors, controls. Your notes are not evidence, and should not take precedence over your independent recollections of the evidence. The notes that you took are strictly confidential. Do not disclose your notes to anyone other than your fellow jurors. Your notes should remain in the jury room and will be collected at the end of the case.

I have selected _____ to act as your foreperson. The foreperson has no greater voice or note than any other juror, but sees that some order is established in the manner in which you proceed and is your spokesperson here in court.

If during your deliberations you should desire to communicate with the Court, please reduce your message in a question to writing signed by your foreman and pass the note to the court security officer 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, that with regard to any message or question that you might send, you should never state or specify your numerical division at the time.

A form of the verdict has been prepared for your convenience. You will take the verdict form into the jury room, and when you have reached an unanimous agreement, you will have the foreperson fill out the verdict form, date and sign it. You will then return to the courtroom where the verdict will be read, and each of you will be asked individually if this is your verdict.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. In other words, your verdict must be unanimous as to each claim. It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

It is your duty as jurors to consult with one another and to deliberate in an effort to reach agreement. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if you are convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.