

CLOSING INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though several of those I gave you during the trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. Each of you has a copy to follow if you want to, but please do not read ahead of me. You may make notes on your copy of the instructions during closing arguments, but please do not mark on my copy on the front page of which I have written, "Court's Copy." Again, all instructions, whenever given and whether in writing or not, must be followed.

CLOSING INSTRUCTION NO. 2

Nothing I have said – neither in these instructions nor in any ruling, action, or remark that I have made during the course of this trial – was intended to give any opinion or suggestion as to what your verdicts should be.

CLOSING INSTRUCTION NO. 3

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness's intelligence, the opportunity a witness had to see or hear the things testified about, a witness's memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

CLOSING INSTRUCTION NO. 4

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar situations of life. A corporation is entitled to the same fair trial at your hands as a private individual. All persons, including corporations, stand equal before the law, and are to be dealt with as equals in a court of justice.

A corporation acts only through its agents or employees and any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of the authority delegated to the agent by the corporation, or within the scope of his duties as an employee of the corporation.

CLOSING INSTRUCTION NO. 5

Your verdict must be for the Plaintiff on Plaintiff's race discrimination claim if all the following elements have been proved by the greater weight of the evidence:

First, the Defendant failed to hire the Plaintiff; and

Second, the Plaintiff's race was a motivating factor in the Defendant's decision.

However, your verdict must be for the Defendant if any of the above elements has not been proved by the greater weight of the evidence, or if it has been proved by the greater weight of the evidence that the Defendant would have decided not to hire the Plaintiff regardless of her race. You may find that the Plaintiff's race was a motivating factor in the Defendant's decision if it has been proved by the greater weight of the evidence that the Defendant' stated reason(s) for its decision are not the real reasons, but are a pretext to hide race discrimination.

CLOSING INSTRUCTION NO. 6

As used in these instructions, the Plaintiff's race was a "motivating factor," if the Plaintiff's race played a part in the Defendant's decision to not hire the Plaintiff. However, the Plaintiff's race need not have been the only reason for the Defendant's decision to not hire the Plaintiff.

CLOSING INSTRUCTION NO. 7

Your verdict must be for the Plaintiff on the Plaintiff's claim of racial harassment by a supervisor if all of the following elements have been proved by the greater weight of the evidence:

First, the Plaintiff was subjected to a hostile working environment;

Second, such conduct was unwelcome;

Third, such conduct was based on the Plaintiff's race;

Fourth, such conduct was sufficiently severe or pervasive that a reasonable person in the Plaintiff's position would find the Plaintiff's work environment to be hostile; and

Fifth, at the time such conduct occurred and as a result of such conduct, the Plaintiff believed her work environment to be hostile.

If any of the above elements has not been proved by the greater weight of the evidence, your verdict must be for the Defendant and you need not proceed further in considering this claim.

CLOSING INSTRUCTION NO. 8

Your verdict must be for the Plaintiff on the Plaintiff's claim of racial harassment by a non-supervisor if all of the following elements have been proved by the greater weight of the evidence:

First, the Plaintiff was subjected to a hostile work environment;

Second, such conduct was unwelcome;

Third, such conduct was based on the Plaintiff's race;

Fourth, such conduct was sufficiently severe or pervasive that a reasonable person in the Plaintiff's position would find the Plaintiff's work environment to be hostile;

Sixth, the Defendant knew or should have known of the harassing conduct; and

Seventh, the Defendant failed to take prompt and appropriate corrective action to end the harassment.

If any of the above elements has not been proved by the greater weight of the evidence, your verdict must be for the Defendant and you need not proceed further in considering this claim.

CLOSING INSTRUCTION NO. 9

Your verdict must be for the Defendant on the Plaintiff's claims of harassment if it has been proved by the greater weight of the evidence that (a) the Defendant exercised reasonable care to prevent and correct promptly any harassing behavior; and (b) that the Plaintiff unreasonably failed to take advantage of the Defendant's harassment and discrimination policy, which advises the Plaintiff to tell the person to stop the harassing conduct, and if this does not work, go to her immediate supervisor and report the incident; however, if the immediate supervisor is personally involved, or if the problem has not been resolved after a reasonable amount of time, then notify the local Human Resource Representative or other local Management employee with whom she feels comfortable discussing the matter. If the problem still has not been resolved, then contact Fiber Glass Systems Division Human Resource Manager, and advise him or her of the problem.

CLOSING INSTRUCTION NO. 10

In determining whether the Defendant exercised reasonable care to prevent and promptly correct any harassing behavior, you should consider the following factors:

- a) whether the Defendant's harassment policy required supervisors, who are notified of harassing conduct, to report this information to their superiors; and
- b) whether the Defendant's harassment policy identified company officials to whom harassment could be reported.

CLOSING INSTRUCTION NO. 11

If you find in favor of the Plaintiff under Instruction No. 5, then you must award the Plaintiff such sum as you find by the greater weight of the evidence will fairly and justly compensate her for damages you find she sustained as a direct result of the Defendant's conduct as described in Instruction No. 5. Damages include wages or fringe benefits you find the Plaintiff would have earned in her employment with the Defendant if she had been hired in the Administrative Assistant position in either July 2006 or November 2006, through the date of May 21, 2007, *minus* the amount of earnings and benefits from other employment received by the Plaintiff during that time. Damages also may include pain and suffering as well as mental anguish that the Plaintiff experienced due to the Defendant's failure to hire the Plaintiff.

CLOSING INSTRUCTION NO. 12

If you find in favor of the Plaintiff under Instruction Nos. 7 and/or 8, then you must award the Plaintiff such sum as you find by the greater weight of the evidence will fairly and justly compensate her for damages you find she sustained as a direct result of the Defendant's conduct as described in Instruction Nos. 7 and/or 8. Damages include expenses for medical treatment sought. Damages also may include pain and suffering as well as mental anguish that the Plaintiff experienced due to the Defendant's racially harassing treatment of the Plaintiff.

CLOSING INSTRUCTION NO. 13

If you find in favor of the Plaintiff under Instruction Nos. 5, 7, and/or 8 but you do not find that the Plaintiff's damages have monetary value, then you must return a verdict for the Plaintiff in the nominal amount of One Dollar (\$1.00).

CLOSING INSTRUCTION NO. 14

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I will discuss those rules now.

First, when you go to the jury room, you must select one of your members as your presiding juror. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of the other jurors. Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach 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.

Third, please remember, no cellular telephones are permitted in the jury room during deliberations – even one that is turned off.

Fourth, during your deliberations, please remember you must not provide any information to anyone by any means about this case. Thus, for example, do not use any electronic device or media, such as the telephone, a cell or smart phone, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.

Fifth, if you need to communicate with me during your deliberations, you may send a note to me through the bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone – including me – how your votes stand numerically.

Sixth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be – that is entirely for you to decide.

Seventh, the verdict forms are simply the written notice of the decisions that you reach in this case. Please take a moment now to look over the attached forms. You will take these forms to the jury room, and when each of you has agreed on the verdict as to each cause of action, your presiding juror will fill in each form, sign, and date it. Upon completing the forms, the presiding juror should advise the bailiff that you are ready to return to the courtroom.

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

CAROL L. FULLER

PLAINTIFF

v.

4:07-CV-01120-WRW

FIBER GLASS SYSTEMS, LP

DEFENDANT

VERDICT FORM #1

Note: Complete this form by writing in the names required by your verdict.

On the race discrimination claim of Plaintiff, as submitted in Instruction No. 5, we find in favor of

_____ or _____
Plaintiff Carol Fuller Defendant Fiber Glass Systems, LP

Note: Complete the following paragraphs only if the above finding is in favor of the Plaintiff. If the above finding is in favor of the Defendant, have your presiding juror sign and date this form because you have completed your deliberation on this claim.

We find the Plaintiff's damages as defined in Instruction No. 5 to be:

\$ _____ (stating the amount or, if none, write the word "none," or if you find that the Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

PRESIDING JUROR

DATE

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

CAROL L. FULLER

PLAINTIFF

v.

4:07-CV-01120-WRW

FIBER GLASS SYSTEMS, LP

DEFENDANT

VERDICT FORM #3

Note: Complete this form by writing in the names required by your verdict.

On the race harassment claim by a supervisor of Plaintiff, as submitted in Instruction No. 8.

we find in favor of

Plaintiff Carol Fuller

or

Defendant Fiber Glass Systems, LP

Note: Complete the following paragraphs only if the above finding is in favor of the Plaintiff. If the above finding is in favor of the Defendant, have your presiding juror sign and date this form because you have completed your deliberation on this claim.

We find the Plaintiff's damages as defined in Instruction No. 8 to be:

\$ _____ (stating the amount or, if none, write the word "none." or if you find that the Plaintiff's damages have no monetary value, set forth a nominal amount such as \$1.00).

PRESIDING JUROR

DATE