

INSTRUCTION NO. 1

Members of the Jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions on the law that applies to this case. You must, of course, continue to follow all the instructions I gave you earlier, as well those I give you now.

The instructions I am about to give you now are in writing and will be available to you in writing in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all my instructions, whether given in writing or spoken from this bench, must be followed.

It is your duty as jurors to follow the law as stated in the instructions, and to apply the given rules of law to the facts as you find them to be from the evidence in this case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law as stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict

upon any other view of the law other than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Nothing I say in the instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts. You will determine the facts. During this trial I have occasionally asked questions of witnesses. Do not assume that because I asked questions I hold any opinion on the matters to which my questions related.

Justice through trial by jury must always depend on the willingness of each individual juror to seek the truth about the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law as given in the Court's instructions.

Statements and arguments of counsel are not evidence in the case. When the lawyers on both sides stipulate or agree on the existence of a fact, however, the Jury must accept the stipulation and regard that fact as proved. The evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them and any documents,

photographs, or other items that are received by the Court, and all facts that may have been admitted or stipulated. Any evidence on which an objection was sustained by the Court – and any witness statement or tangible item that was stricken by the Court – must be entirely disregarded.

Anything you may have seen or heard outside this courtroom is not evidence, and it must be entirely disregarded.

INSTRUCTION NO. 2

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you all 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 your fellow jurors, and listened to the views of your fellow 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, if you need to communicate with me during your deliberations, you may send a note to me, through the court security officer, that is 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 never tell anyone – including me – how your votes stand numerically.

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

INSTRUCTION NO. 3

This case should be considered and decided by you as a dispute between persons of equal worth. All persons stand equal before the law and are to be treated as equals.

INSTRUCTION NO. 4

You are the sole judges of the credibility of the witnesses and the weight and value to be given to their testimony. 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 the witness's intelligence; the opportunity the witness had to see or hear the things about which he or she testified; the witness's memory; any motives a witness may have for testifying a certain way; the manner and demeanor of the witness while testifying; whether the witness said something different at an earlier time; the general reasonableness or unreasonableness of the testimony; and the extent to which the testimony is consistent with any other 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, 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.

INSTRUCTION NO. 5

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 that is inconsistent with the witness's present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness whatever credibility, if any, you think it deserves.

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

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

INSTRUCTION NO. 6

In considering the evidence in this case you are not required to set aside your common sense or common knowledge. You have the right to consider all the evidence in light of your own observations and experiences in the affairs of life.

INSTRUCTION NO. 7

In these instructions you are told that one or the other party has the burden to prove certain facts. The burden of proving a fact is placed upon the party whose claim or defense depends upon that fact. The party who has the burden of proving a fact must prove it by a preponderance of the evidence. To prove something by the “preponderance of the evidence” is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable.

If, on any issue of fact in the case, the evidence is equally balanced, you cannot find that fact has been proved. The preponderance of the evidence is not necessarily established by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term “proof beyond a reasonable doubt.” This is a stricter standard, which applies in criminal cases. It does not apply in civil cases like this one. You should, therefore, put it out of your minds.

INSTRUCTION NO. 8

Your verdict must be for Louise Rounds and against Southern Heritage on Rounds's claim of interference with her FMLA leave rights if Rounds has proved all the following elements:

First, Rounds was an FMLA-eligible employee;

Second, Rounds's mother had a serious health condition;

Third, Rounds needed leave to care for her mother;

Fourth, Rounds provided timely notice to Southern Heritage of her need for leave;

Fifth, Rounds gave Southern Heritage enough information (as soon as was practicable) so that Southern Heritage should have known the leave was to care for her mother; and

Sixth, Southern Heritage refused to allow Rounds to take FMLA leave.

An "FMLA-eligible employee" means a person who has been employed for at least twelve months with the employer and who worked at least 1,250 hours the previous year. A "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either (1) inpatient care in a hospital, hospice, or residential medical facility, or (2)

continuing treatment by a health care provider. An employee is “needed to care for” a parent with a serious health condition when the parent is unable to care for her own basic medical, hygienic, or nutritional needs or safety. The phrase also includes providing psychological comfort and reassurance which would be beneficial to a parent with a serious health condition who is receiving inpatient or home care. The phrase also includes situations where the employee may be needed to fill in for others who are caring for the parent or to arrange for changes in care, such as transfer to a nursing home. The employee need not be the only individual or family member available to care for the parent. “Timely notice” means notifying the employer at least thirty days before leave is to begin or as soon as practicable after learning of the need to take leave.

If Rounds has not proved all six elements against Southern Heritage, then your verdict must be for Southern Heritage.

INSTRUCTION NO. 9

If you find in favor of Rounds, then you must award her an amount of money that will fairly compensate her for two things:

First, any wages, employment benefits, or other compensation Rounds lost or was denied by reason of Southern Heritage's FMLA violation; and

Second, any actual monetary loss sustained by Rounds as a direct result of Southern Heritage's FMLA violation, such as the cost of providing care, up to a sum equal to twelve weeks of Rounds's wages.

You may not award damages for emotional distress. Any award must include interest in addition to Rounds's out-of-pocket loss.

Remember, throughout your deliberations you must not engage in any speculation, guess, or conjecture, and you must not award any damages under this Instruction by way of punishment or through sympathy.

INSTRUCTION NO. 10

The verdict form is simply the written notice of your decision. See the attached question.

You will take the verdict form to the jury room, and when each of you has agreed on the answers, your foreperson will fill in the form for each question that you are called upon to answer to reflect your unanimous decision, sign and date it, and then advise the court security officer that you are ready to return to the Courtroom.

I add the caution that nothing said in the instructions – nothing in the form of the verdict form prepared for your convenience – is or was intended to suggest or convey in any way or manner any intimation as to what answers I think you should find. How you choose to answer the verdict form shall be the sole and exclusive responsibility of you, the Jury.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the court security officer, signed by your foreperson, or by one or more members of the Jury. No member of the Jury should ever attempt to communicate with the Court by any means other than a signed writing; and the Court will never communicate with any member of

the Jury on any subject touching the merits of the case, other than in writing, or orally here in open Court.

You will note from the oath about to be taken by the court security officer to act as bailiff that he, and all other persons, are forbidden to communicate in any way or manner with any member of the Jury on any subject touching the merits of the case. Bear in mind also that you are never to reveal to any person, not even to the Court, how the Jury stands, numerically or otherwise, on the issue presented to you unless or until you reach a unanimous verdict.

Court security officer, do you solemnly swear to keep this Jury together in the jury room, and not to permit any person to speak to or communicate with them, concerning this case, nor to do so yourself unless by order of the Court or to ask whether they have agreed on a verdict, and to return them into the Courtroom when they have so agreed, or when otherwise ordered by the Court, so help you God?