

Ashley Alford

vs.

Richard Moore and Aaron Rents Inc.,

Case No. 08-683-MJR

General Jury Instructions

Applicable to

All Counts

If you decide to award punitive damages as to any particular count, you should consider only the conduct you have found by the evidence to have occurred in that particular count when making the award. The conduct that you may consider can vary from count to count. You should not award duplicate punitive damages.

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Jury Instructions Applicable to

Count I-Assault –Richard Moore Defendant

Under **Count I, Assault**, in addition to compensatory damages, state law permits you, under certain circumstances, to award punitive damages. If you find that Richard Moore's conduct was intentional or willful and wanton and proximately caused damage to Ashley Alford, and if you believe that justice and the public good require it, you may award an amount of money which will punish Richard Moore and discourage Richard Moore and others from similar conduct.

In arriving at your decision as to the amount of punitive damages, you should consider the following three questions. The first question is the most important to determine the amount of punitive damages:

1. How reprehensible was Richard Moore's conduct? On this subject, you should consider the following:
 - a) The facts and circumstances of Richard Moore's conduct;
 - b) The vulnerability of Ashley Alford;
 - c) The duration of the misconduct;
 - d) The frequency of Richard Moore's misconduct;
 - e) Whether the harm was physical as opposed to economic;
 - f) Whether Richard Moore tried to conceal the misconduct;
 - g) The financial condition of Richard Moore.
2. What actual and potential harm did Richard Moore's conduct cause to Ashley Alford in this case?
3. What amount of money is necessary to punish Richard Moore and discourage Richard Moore and others from future wrongful conduct?

The amount of punitive damages must be reasonable and in proportion to the actual and potential harm suffered by Ashley Alford.

When I use the expression “willful and wanton conduct,” I mean a course of action which shows actual or deliberate intention to harm.

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Jury Instructions Applicable to
Count II-Battery –Richard Moore Defendant

Under **Count II, Battery**, in addition to compensatory damages, state law permits you, under certain circumstances, to award punitive damages. If you find that Richard Moore's conduct was intentional or willful and wanton and proximately caused damage to Ashley Alford, and if you believe that justice and the public good require it, you may award an amount of money which will punish Richard Moore and discourage Richard Moore and others from similar conduct.

In arriving at your decision as to the amount of punitive damages, you should consider the following three questions. The first question is the most important to determine the amount of punitive damages:

1. How reprehensible was Richard Moore's conduct? On this subject, you should consider the following:
 - a) The facts and circumstances of Richard Moore's conduct;
 - b) The vulnerability of Ashley Alford;
 - c) The duration of the misconduct;
 - d) The frequency of Richard Moore's misconduct;
 - e) Whether the harm was physical as opposed to economic;
 - f) Whether Richard Moore tried to conceal the misconduct;
 - g) The financial condition of Richard Moore.
2. What actual and potential harm did Richard Moore's conduct cause to Ashley Alford in this case?
3. What amount of money is necessary to punish Richard Moore and discourage Richard Moore and others from future wrongful conduct?

The amount of punitive damages must be reasonable and in proportion to the actual and potential harm suffered by Ashley Alford.

When I use the expression “willful and wanton conduct,” I mean a course of action which shows actual or deliberate intention to harm.

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Jury Instructions Applicable to

Count V-Failure to Supervise – Aaron Rents Inc. Defendant

Aaron Rents, Inc. is a corporation and can act only through its officers and employees. As to plaintiff's claim for compensatory damages against Aaron Rents, Inc., any act or omission of an officer or employee within the scope of his employment is the act or omission of the defendant corporation.

Under Count V, *Negligent Supervision*, as to plaintiff's claim for punitive damages against Aaron Rents, Inc. a different rule applies. Punitive damages may be awarded against Aaron Rents, Inc. only if you find that, as to the acts or omissions giving rise to liability under Count V, one or more of the following conditions are proved as to Brad Martin and/or Richard Moore:

- (a) The corporation, through its management, authorized the doing and the manner of the act or omission; or,
- (b) The employee responsible for the act or omission was unfit, and the corporation was reckless in employing him; or,
- (c) The act or omission was that of a managerial employee who was acting in the scope of his employment; or,
- (d) The corporation, through its management or a managerial employee, ratified or approved the act or omission.

In considering (a), (c) and (d) above, an employee acts in a managerial capacity whenever he is invested with general powers to exercise discretion and judgment when dealing with corporate matters.

In considering (c) above, an employee is acting within the scope of his employment if each of the following is shown by the evidence:

- (a) The employee's conduct is of a kind he is employed to perform or reasonably could be said to have been contemplated as part of his employment; and
- (b) The employee's conduct occurs substantially within the authorized time and space limits of his employment; and

- (c) The employee's conduct is motivated, at least in part, by a purpose to serve the employer.

Under **Count V, *Negligent Supervision***, in addition to compensatory damages, the law permits you under certain circumstances to award punitive damages. If you find that Aaron Rents, Inc.'s conduct was intentional or willful and wanton and proximately caused damage Ashley Alford, and if you believe that justice and the public good require it, you may award an amount of money which will punish Aaron Rents, Inc. and discourage Aaron Rents, Inc. and others from similar conduct.

In arriving at your decision as to the amount of punitive damages, you should consider the following three questions. The first question is the most important to determine the amount of punitive damages:

1. How reprehensible was Aaron Rents, Inc.'s conduct? On this subject, you should consider the following:
 - a) The facts and circumstances of Aaron Rents, Inc.'s conduct;
 - b) The vulnerability of Ashley Alford;
 - c) The duration of the misconduct;
 - d) The frequency of Aaron Rents, Inc.'s misconduct;
 - e) Whether the harm was physical as opposed to economic;
 - f) Whether Aaron Rents, Inc. tried to conceal the misconduct;
 - g) The financial condition of Aaron Rents, Inc.
2. What actual and potential harm did Aaron Rents, Inc.'s conduct cause to Ashley Alford in this case?
3. What amount of money is necessary to punish Aaron Rents, Inc. and discourage Aaron Rents, Inc. and others from future wrongful conduct?

The amount of punitive damages must be reasonable and in proportion to the actual and potential harm suffered by Ashley Alford.

When I use the expression “willful and wanton conduct,” I mean a course of action which shows an utter indifference to or conscious disregard for a person’s own safety and the safety of others.

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Jury Instructions Applicable to
Count XII-Title VII-Sexual Harassment –
Aaron Rents Inc. Defendant

Under **Count XII, *Sexual Harassment***, you may, but are not required to, assess punitive damages against Aaron Rents, Inc. The purposes of punitive damages are to punish a defendant for its conduct and to serve as an example or warning to Aaron Rents, Inc. and others not to engage in similar conduct in the future.

Ashley Alford must prove by a preponderance of the evidence that punitive damages should be assessed against Aaron Rents, Inc. You may assess punitive damages only if you find that the conduct of Aaron Rents' managerial employees, was in reckless disregard of Ashley Alford's rights. An action is in reckless disregard of Ashley Alford's rights if taken with knowledge that it may violate the law.

Plaintiff must prove by a preponderance of the evidence that Aaron Rents, Inc.'s managerial employees acted within the scope of their employment and in reckless disregard of Ashley Alford's right not to be discriminated against.

In determining whether Brad Martin, Joseph Skortz, John Peterson, and/or Richard Moore were managerial employees of Aaron Rents, Inc., you should consider the kind of authority Aaron Rents, Inc. gave to them, the amount of discretion each had in carrying out his job duties and the manner in which he carried them out.

You should not, however, award Ashley Alford punitive damages if Aaron Rents, Inc. proves that it made a good faith effort to implement an antidiscrimination policy.

If you find that punitive damages are appropriate under Count XII, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of Aaron Rents' conduct;
- the impact of Aaron Rents' conduct on Ashley Alford;
- the relationship between Ashley Alford and Aaron Rents, Inc.;
- the likelihood that Aaron Rents, Inc. would repeat the conduct if an award of punitive damages is not made;

- Aaron Rents, Inc.'s financial condition;
- the relationship of any award of punitive damages to the amount of actual harm Ashley Alford suffered.

When I say a particular party must prove something by a preponderance of the evidence, or when I use the expression if you find, or if you decide, this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.