

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

PAUL LAWRENCE,)
)
 Plaintiff,)
)
 v.) No. 06-2095 JPM/TMP
)
 SMITHKLINE BEECHAM)
 CORPORATION d/b/a)
 GLAXOSMITHKLINE,)
)
 Defendant.)

JURY INSTRUCTIONS

Ladies and gentlemen of the jury, we have now come to the point in the case when it is my duty to instruct you in the law that applies to the case and you must follow the law as I state it to you.

As jurors it is your exclusive duty to decide all questions of fact submitted to you and for that purpose to determine the effect and value of the evidence.

You must not be influenced by sympathy, bias, prejudice or passion.

You are not to single out any particular part of the instructions and ignore the rest, but you are to consider all the instructions as a whole and regard each in the light of all the others.

Now let me outline for you the parts of the charge so that you can follow it more easily. First, I will instruct you as to the burden of proof and upon which party the law places that burden in the case, and I will give you some rules to help you as you consider the evidence. Second, I will outline for you the contentions and theories of the parties. Third, I will outline for you the law to apply in determining the legal issues with respect to unlawful termination. Fourth, I will instruct you on the law with respect to damages. Finally, I will explain to you about the form of your verdict.

GENERAL INSTRUCTIONS

Corporate Defendant:
All Persons Equal Before the Law

In this case, the Defendant, SmithKline Beecham Corporation d/b/a GlaxoSmithKline, is a corporation. The fact that a corporation is a party must not prejudice you in your deliberations or in your verdict.

You may not discriminate between corporations and natural individuals. Both are persons in the eyes of the law, and both are entitled to the same fair and impartial consideration and to justice by the same legal standards.

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 stations of life. A corporation is entitled to the same fair trial at your hands as a private individual. All persons, including corporations, partnerships, unincorporated associations, and other organizations, stand equal before the law, and are to be dealt with as equals in a court of justice.

While SmithKline Beecham Corporation d/b/a GlaxoSmithKline ("GSK") is the Defendant in this case, that does not mean that only the actions of GSK as one body can be considered by you in determining its liability in this case. GSK acts not only through the policies and decisions that it makes, but also through its designated supervisory employees, such as its managers, supervisors, and others designated by GSK to act on its behalf.

Pay close attention to the remainder of these instructions. As you apply subsequent portions of these instructions, you will have to determine whether or not individual GSK employees were authorized to act on behalf of GSK.

Burden of Proof and
Consideration of the Evidence

I will now instruct you with regard to where the law places the burden of making out and supporting the facts necessary to prove the theories in the case.

When, as in this case, the Defendant denies the material allegations of the Plaintiff's claims, the law places upon the Plaintiff the burden of supporting and making out each element of each claim by the greater weight or preponderance of the evidence.

Preponderance of the evidence - - means that amount of factual information presented to you in this trial which is sufficient to cause you to believe that an allegation is probably true. In order to preponderate, the evidence must have the greater convincing effect in the formation of your belief. If the evidence on a particular issue appears to be equally balanced, the party having the burden of proving that issue - in this case, the Plaintiff - must fail.

You must consider all the evidence pertaining to every issue, regardless of who presented it.

Weighing the Evidence (2-12)

You members of the jury are judges of the facts concerning the controversy involved in this lawsuit. In order for you to determine what the true facts are, you are called upon to weigh the testimony of every witness who has appeared before you, and to give the testimony of the witnesses the weight, faith, credit and value to which you think it is entitled.

You will note the manner and demeanor of witnesses while on the stand. You must consider whether the witness impressed you as one who was telling the truth or one who was telling a falsehood and whether or not the witness was a frank witness. You should consider the reasonableness or unreasonableness of the testimony of the witness; the opportunity or lack of opportunity of the witness to know the facts about which he or she testified; the intelligence or lack of intelligence of the witness; the interest of the witness in the result of the lawsuit, if any; the relationship of the witness to any of the parties to the lawsuit, if any; and whether the witness testified inconsistently while on the witness stand, or if the witness said or did something or failed to say or do something at any other time that is inconsistent with what the witness said while testifying.

If a witness is shown to have knowingly testified falsely concerning any material matter, you have a right to distrust such witness' 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. An act or omission is done "knowingly" if it is done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

These are the rules that should guide you, along with your common judgment, your common experience and your common observations gained by you in your various walks in life, in weighing the testimony of the witnesses who have appeared before you in this case. If there is a conflict in the testimony of the witnesses, it is your duty to reconcile that conflict if you can, because the law presumes that every witness has attempted to and has testified to the truth. But if there is a conflict in the testimony of the witnesses which you are not able to reconcile, in accordance with these instructions, then it is with you absolutely to determine which ones of the witnesses you believe have testified to the truth and which ones you believe have testified to a falsehood.

Immaterial discrepancies do not affect a witness's testimony, but material discrepancies do. 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.

The greater weight or preponderance of the evidence in a case is not determined by the number of witnesses testifying to a particular fact or a particular state of facts. Rather, it depends on the weight, credit and value of the total evidence on either side of the issue, and of this you jurors are the exclusive judges.

If in your deliberations you come to a point where the evidence is evenly balanced and you are unable to determine which way the scales should turn on a particular issue, then the jury must find against the party, upon whom the burden of proof has been cast in accordance with these instructions.

Direct and Circumstantial Evidence

There are two kinds of evidence -- direct and circumstantial. Direct evidence is testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

Statements of Counsel

You must not consider as evidence any statements of counsel made during the trial. If, however, counsel for the parties have stipulated to any fact, or any fact has been admitted by counsel, you will regard that fact as being conclusively established.

As to any questions to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection, and you must assume that the answer would be of no value to you in your deliberations.

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken out by the court. Such matter is to be treated as though you had never known it.

You must never speculate to be true any insinuation suggested by a question asked a witness. A question is not evidence. It may be considered only as it supplies meaning to the answer.

All Available Evidence Need
Not Be Produced

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

Totality of the Evidence (2-A)

The jury may consider all evidence admitted in the case. Testimony and documents which the Court allowed into evidence over a hearsay objection may be considered by you as evidence, on the same basis as all other evidence, for the purpose for which it was admitted. For example, matters and things which a decisionmaker is told may be considered for the purpose of explaining the basis upon which that person acted or made a decision. This, of course, is all for you, the jury, to decide.

THEORIES AND CONTENTIONS IN THIS CASE

Stipulated Facts

Before the trial of this case, the parties agreed to the truth of certain facts in this action. As a result of this agreement, the Plaintiff and Defendant entered into certain stipulations in which they agreed that the stipulated facts could be taken as true without either party presenting further proof on the matter. This procedure is often followed to save time in establishing facts which are undisputed.

Facts stipulated to by the parties in this case include the following:

1. Plaintiff Lawrence was hired by the Defendant-GlaxoSmithKline in June 2002, and held the position of plant electrician and/or journeyman electrician until the date of his termination.
2. Prior to the event leading to Plaintiff's termination, he had received one written notice of discipline.
3. At all times complained of herein, Defendant-GlaxoSmithKline had licensed electricians working at its Memphis facility, including Plaintiff Lawrence, but did not employ an on-site Plant Master Electrician.

4. In March 2004, GSK management approached Mr. Lawrence and other electricians of the facility about obtaining a Plant Master Electrician's License.
5. In August 2004 Plaintiff learned of his passing score to get a Tennessee Master Electrician's license.
6. Plaintiff subsequently had a meeting with Defendant's management to discuss the application requirements for Plaintiff to be designated as the Plant Master Electrician at this facility.
7. On December 3, 2004 Plaintiff pulled and took home approximately 1,000 feet of copper cable.
8. GSK terminated Plaintiff on January 14, 2005.

Theories of the Parties

This is a case about alleged retaliation for refusing to remain silent regarding asserted electrical code violations. In this case, Plaintiff Paul M. Lawrence alleges two theories of recovery against Defendant SmithKline Beecham Corporation d/b/a GlaxoSmithKline ("GSK"). The first legal theory in the case is that Mr. Lawrence was terminated in violation of the Tennessee Public Protection Act, Tennessee Code Annotated Section 50-1-304. The second legal theory in the case is that Mr. Lawrence was terminated in violation of the Tennessee common law regarding whistle blowing retaliation.

Plaintiff's Contentions

In this case, the Plaintiff contends that he had reasonable cause to believe that the Defendant engaged in certain illegal activity, specifically activity that would be, or had been, in violation of the regulations found in the Memphis and Shelby County Joint Electrical Code and/or the National Electrical Code, which govern all electrical work done in Memphis and Shelby County. He also contends that the Defendant discharged him from employment in violation of the law in retaliation for his refusal to remain silent about that activity by in good faith reporting it to management at the company and to the Shelby County Code Enforcement office.

Defendant's Contentions

GlaxoSmithKline contends that Mr. Lawrence was terminated because he stole \$750 worth of materials belonging to an electrical contractor performing work for GlaxoSmithKline. GlaxoSmithKline denies it retaliated against him for any complaints he made about electrical code violations. GlaxoSmithLine further contends that any complaints made by Mr. Lawrence were invalid and were not made in good faith, but were rather made in order to pressure GlaxoSmithKline into agreeing to give Mr. Lawrence a significant increase in pay.

GENERAL INSTRUCTIONS ON THE APPLICABLE LAW

Turning now to the legal theories in the case, it is my duty to tell you what the law is. If any lawyer has told you that the law is different from what I tell you it is, you must, of course, take the law as I give it to you. That is my duty. However, it is your duty, and yours alone, to determine what the facts are and after you have determined what the facts are, to apply those facts to the law as I give it to you, free from any bias, prejudice or sympathy, either one way or the other.

As has been already set out, the Plaintiff alleges two separate causes of action.

Tennessee Public Protection Act and
Tennessee Common Law
Retaliatory Discharge from Employment

The Tennessee Public Protection Act protects employees from discharge for refusing to participate in, or for refusing to remain silent about, illegal activities at their work place.

That law specifically provides that:

(a) No employee shall be discharged or terminated solely for refusing to participate in, or for refusing to remain silent about, illegal activities.

(b) As used in this section, "illegal activities" means activities which are in violation of the criminal or civil code of this state or the United States or any regulation intended to protect the public health, safety or welfare.

(c) Any employee terminated in violation of subsection (a) shall have a cause of action against the employer for retaliatory discharge and any other damages to which the employee may be entitled.

This law is a recognition that the protection of employees who report violations of laws, regulations, and rules is part of Tennessee public policy. The statute's protection extends to employees who have reasonable cause to believe a law, regulation, or rule has been violated or will be violated, and in good faith reports it.

The action or conduct for which the statute provides vindication is not disobeying their employer's instructions, but rather terminating the Plaintiff's employment for exercising a right granted by law. It is axiomatic that an employer who is engaged in illegal activity does not want that activity reported to those officials who are responsible for enforcing the law. Illegal activity in a work environment cannot exist without at least the forbearance of the workers. Employees have the absolute right to speak out about illegal activities in their workplace.

Generally, an employer in Tennessee can discharge an employee-at-will, such as the Plaintiff in this case, for good cause, for bad cause, or for no cause at all, without incurring liability for damages. However, there is an exception to this general rule where the employer has violated the clearly established public policy of our state. The essence of this "public policy" exception is that an employee may claim damages for retaliatory discharge when the motivating factor for the discharge violates clear public policy as evidenced by a clear constitutional, statutory or regulatory provision, including code violations.

Therefore, after hearing all of the proof in this case, if you find that the sole factor or a substantial factor in the Defendant's decision to discharge the Plaintiff was retaliation for his refusal to remain silent about conduct of the Defendant which he had reasonable cause to believe was or would be in

violation of the Memphis and Shelby County Joint Electrical Code
and National Electrical Code and/or National Electrical Code,
then you may award damages.

PRIMA FACIE CASE

To prevail in this retaliatory discharge claim, the Plaintiff first must prove the following elements (what we call his "prima facie" case):

1. That the Plaintiff was an employee of the Defendant;
2. That the Plaintiff refused to participate in or remain silent about illegal activity;
3. That his refusal to remain silent about or participate in illegal conduct by the Defendant was the sole or a substantial factor in his discharge; and
4. That the Plaintiff suffered damages as a consequence of that discharge.

LEGITIMATE NON-RETALIATORY REASON

Once the Plaintiff establishes these elements in a case of retaliation, the burden of production shifts to the Defendant to articulate some legitimate, non-retaliatory reason for discharging the Plaintiff. The burden then shifts back to the Plaintiff employee to demonstrate that the employer's proffered reason for the discharge was merely pretextual and that the adverse employment decision was motivated by a desire to retaliate against him.

PROOF OF PRETEXT

To prove pretext, the Plaintiff may show either (1) that the Defendant's reasons had no basis in fact; (2) that the proffered reason did not actually motivate the discharge; or (3) that the reasons were insufficient to motivate the discharge.

Illegal Activities

Let me explain something more about the second element (component) that the Plaintiff must prove. In order to establish a *prima facie* case of retaliatory discharge under the Tennessee Public Protection Act, Plaintiff must prove that he refused to remain silent about illegal activities. The term "illegal activities" means activities which are in violation of the criminal or civil code of the State of Tennessee or the United States or any regulation that implicates a fundamental public policy concern such as the need to protect the public health, safety or welfare. Not every law and not every violation of a law implicates a fundamental public policy concern. It is *not* the law that just *any* regulatory infraction by an employer, no matter how minor, can support a claim of retaliatory discharge.

In order to prevail, Plaintiff must show that the *specific* violation or violations of the Shelby-County Electrical Code he reported implicate a fundamental public policy concern.

Prima Facie Case 4th Element
Causal Link and Order of Events

Let me also explain something more about the fourth element (component) that the Plaintiff must prove in order to establish a prima facie case of retaliatory discharge. The Plaintiff must prove that there is a causal link between his alleged protected activity and the Defendant's decision to discharge Plaintiff. To do so, Plaintiff must prove that the Defendant had actual knowledge that Plaintiff had engaged in the specific protected activity he claims led to his termination at the time Defendant decided to discharge him. It does not matter whether the Defendant had this actual knowledge when the decision to terminate Plaintiff was actually carried out. It only matters if the Defendant had actual knowledge of protected activity at the time the decision was made.

It is Plaintiff's burden to prove that the Defendant had actual knowledge that he had engaged in the protected activity he claims led to his discharge at the time it decided to discharge him. If you find that the Defendant made the decision to terminate Plaintiff before it had actual knowledge that Plaintiff had engaged in the protected activity he claims led to his discharge, then you must find for the Defendant.

Legitimate, Non-Retaliatory Reason

In this case, Defendant has provided a legitimate, non-retaliatory reason for its decision to terminate Plaintiff's employment. A legitimate, non-retaliatory reason is any reason or explanation unrelated to Mr. Lawrence's alleged complaining about illegal activities. In considering the legitimate, non-retaliatory reason stated by Defendant for its decision, you are not to second-guess the correctness of that decision or to otherwise substitute your judgment for that of Defendant. Even if you disagree with the decision, a company is entitled to terminate an employee at will, such as Plaintiff, for any reason it deems appropriate as long as that reason does not violate the law.

In this case, the ultimate burden of persuading the jury remains at all times with Plaintiff to show that Defendant intentionally retaliated against him for complaining about electrical code violations. Defendant, therefore, is not required to prove that its decision actually was motivated by the stated legitimate, non-retaliatory reason. Nor must Defendant prove the absence of a retaliatory motive.

Pretext

To prevail, Plaintiff must prove by a preponderance of the evidence that the reason given by Defendant for its decision was a pretext. A pretext is a reason asserted in order to disguise or hide the truth. Here, a pretext would mean that the reason which Defendant asserts motivated its decision to discharge Plaintiff was in fact not the actual reason for its decision. Plaintiff has the burden of proving that Defendant's reason was not true and was used to hide the fact that its decision to terminate him was more likely than not because Plaintiff complained about electrical code violations.

Common Law Retaliatory Discharge - Prima Facie Case

In order for Mr. Lawrence to prevail on his claim for wrongful discharge under the Tennessee common law, Mr. Lawrence must also establish a *prima facie* case of retaliation, as well as overcome the Defendant's asserted legitimate non-retaliatory reason for his termination. As with the Tennessee Public Protection Act, in order to prove his *prima facie* case, Mr. Lawrence must establish four separate elements by a preponderance of the evidence. If Mr. Lawrence does not prove each and every element of his case by a preponderance of the evidence then you must find for GlaxoSmithKline. The elements that Mr. Lawrence must prove are as follows:

1. He was an employee of GlaxoSmithKline;
2. He was terminated from his employment;
3. He exercised a constitutional or statutorily protected right (i.e., that he refused to remain silent when confronted with illegal activity by the employer); and
4. His exercise of a protected right to speak out/refusal to remain silent was a substantial motivating factor in GlaxoSmithKline's decision to discharge him.

Note the only change in this claim is contained in element 4. Under the common law, the Plaintiff need only prove that his exercise of his rights to report company action that he in good faith believed violated the applicable electrical code was a

substantial motivating factor (not the sole motivating factor) in his termination.

Substantial Motivating Factor

A substantial motivating factor is a factor that played a part in Defendant's decision to terminate the Plaintiff. In showing the Plaintiff's good faith report of electrical code violations and/or refusal to remain silent was a motivating factor, Plaintiff is not required to prove that his report of code violations was the sole motivation or even the primary motivation for the Defendant's decision. Plaintiff need only prove that his report and/or refusal to remain silent played a part in Defendant's decision even though other factors may also have motivated the Defendant.

Other Evidence of Retaliation

You may have heard evidence that Plaintiff feels he was retaliated against in other ways besides his discharge. It is only a retaliatory discharge that is prohibited by the common law and the Tennessee Public Protection Act. Retaliatory acts short of termination do not violate the law. Thus, if Plaintiff does not prove by a preponderance of the evidence that his complaints about electrical code violations were either the sole or substantial factor in Defendant's decision to discharge Plaintiff, you must find in favor of Defendant. This is so even if you find Plaintiff has proved that he experienced other forms of retaliation.

Temporal Proximity

Plaintiff has stated that a short amount of time elapsed between the date he complained about electrical code violations and the date he was discharged. Even if you find that the evidence shows that a short time elapsed between these two events, such evidence standing alone does not prove retaliation. Rather, Plaintiff must come forward with other evidence that suggests that Defendant's stated reason for terminating his employment was untrue. Should he fail to do so, you must find in favor of Defendant.

Business Judgment

When deciding Plaintiff's retaliation claim, you must keep in mind that an employer is entitled to make business decisions for any reason, whether good or bad, so long as those decisions are not motivated by a factor that is illegal, such as retaliation. Accordingly, Defendant is entitled to make its own subjective personnel decisions, regardless of whether or not you agree with the decision, and can terminate an employee for any reason that is not retaliatory. It is not your function as jurors to second-guess the decision Defendant made with regard to Plaintiff if that decision was otherwise lawful. Likewise, you may not find for Plaintiff and against Defendant just because you may disagree with Defendant stated reasons for Plaintiff's termination, or because you believe that the decision was harsh or unreasonable. Instead, your function is to determine only whether in making its decision to discharge Plaintiff, Defendant broke the law by permitting retaliation to be the determining or substantial factor in that decision.

Damages

If you find that the Plaintiff has carried his burden of proving by a preponderance of the evidence that Defendant retaliated against him in accordance with these instructions, you must then consider the issue of damages.

I shall now instruct you on the award of damages allowed in a retaliation claim. The fact that I am giving you instructions on damages should not be considered as an indication of any view of mine as to which party is entitled to your verdict. Instructions as to the measure of damages are given only for your guidance and are to be applied only in the event that you should find in favor of the Plaintiff by a preponderance of the evidence, in accordance with the instructions that I have given you. If you decide that the Plaintiff is not entitled to prevail with respect to his claims, you shall not answer any questions on the Verdict Form with regard to damages.

If you find Defendant retaliated against Plaintiff, then you must determine an amount that is fair and reasonable compensation for damages. You may award compensatory damages only for damages for injuries that the Plaintiff proves were caused by Defendant's allegedly unlawful conduct. The damages that you award must be fair compensation - no more and no less.

Damage Instruction
Actual Damages
Proximate Cause

If you find for Plaintiff, then you may award him such actual damages as you may find from a preponderance of the evidence were proximately caused by the acts of Defendant. A proximate cause of damage is a cause which, in natural and continuous sequence, produces the damage, and without which the damage would not have occurred.

Damages - Back Pay

If you find that the Defendant terminated the Plaintiff in violation of the Tennessee Public Protection Act, T.C.A. §50-1-304 or the Tennessee common law of whistle blower retaliation as defined, then the Plaintiff is entitled to recover the back pay and benefits that he would have received from the Defendant from the date of his discharge through the date of his re-employment. However, you must note that there are certain deductions and offsets which must be made relative to any back pay award.

First, you must deduct from any such award any amounts earned by the Plaintiff from employment in substitution for employment with the Defendant -- that is, amounts earned from employment with other employers after the Plaintiff was discharged by Defendant.

Second, you must deduct from any back pay award any amounts which could have been earned by Plaintiff through the exercise of reasonable diligence after his discharge.

Third, you may not include back pay for any period during which the Plaintiff was not actively seeking employment.

Fourth, you should not deduct overtime compensation pay received by the Plaintiff at his new employment (that is, his

employment after GlaxoSmithKline) from any back pay award unless it is certain that the Plaintiff would not have earned overtime if he had continued to work at GlaxoSmithKline and lost overtime pay he claims he would have earned at GSK is a part of his computed claim for back pay.

Plaintiff may only be awarded money for damages that were proximately caused by a wrongful act of Defendant. To be a proximate cause, there must not be any other cause that interrupted and succeeded the alleged wrongful conduct of the Defendant. Thus, if Plaintiff suffered emotional distress because of other events in his life, this distress was not proximately caused by the Defendant then Defendant is not responsible for paying damages for any such distress.

Duty to Mitigate 2.12

The general law is that when an employee has been unlawfully discharged by his employer, he is entitled to receive his actual loss of wages, but it is his duty to minimize or mitigate this loss by seeking other employment. The employee is required to exercise reasonable diligence in seeking other employment of a similar or comparable nature.

If you find that Plaintiff refused to accept substantially equivalent employment which would have lessened his damages, or that he did not use reasonable diligence in an effort to find or retain substantially equivalent employment, then you should not award damages for any such period in which he failed to mitigate his damages.

You may not award damages based simply on speculation or guesswork. Any award must fairly compensate Plaintiff for his injury but must have a basis in the evidence and be reasonable in the light of that evidence.

Your verdict, if any, on damages for retaliatory termination under these instructions should be recorded on the Verdict Form.

Compensatory Damages - Mental Anguish

The Plaintiff has alleged that, as a result of Defendant's intentional retaliation, he has suffered emotional distress, such as pain, suffering, loss of enjoyment of life, humiliation, embarrassment, or mental anguish. The Plaintiff has the burden of proving any compensatory damages by a preponderance of the evidence. If the Plaintiff does not establish that he has experienced emotional distress because of Defendant's conduct, then Plaintiff cannot recover compensatory damages. I remind you that you may award compensatory damages for mental anguish only for injuries that Plaintiff proved were caused by Defendant's allegedly retaliatory discharge. The damages that you award must be fair and reasonable, and not excessive. You should not award compensatory damages for mental anguish based on speculation that the Plaintiff may have suffered. Damages for emotional distress may be inferred from circumstances, as well as proved by testimony.

If you determine that the Plaintiff has proven by a preponderance of the evidence that he has experienced emotional distress, you may award him damages for those injuries. No evidence of the monetary value of such intangible things as pain and suffering has been, or need to be, introduced into evidence. No exact standard exists for fixing the compensation to be awarded

for these elements of damages. The damages that you award must be fair and reasonable compensation - no more no less.

Punitive Damages

Plaintiff has asked that you make an award of punitive damages, but this award may be made only under the following circumstances. You may consider an award of punitive damages only if you find that the Plaintiff has suffered actual damage as a legal result of the Defendant's fault and you have made an award for compensatory damages.

The purpose of punitive damages is not to further compensate the Plaintiff but to punish a wrongdoer and deter others from committing similar wrongs in the future. Punitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition. Punitive damages may be considered if, and only if, the Plaintiff has shown by clear and convincing evidence that a Defendant has acted either intentionally, recklessly, maliciously, or fraudulently. Clear and convincing evidence is a different and higher standard than preponderance of the evidence, it means that the Defendant's wrong, if any, must be so clearly shown that there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.

A person acts intentionally when it is the person's purpose or desire to do a wrongful act or to cause the result.

A person acts recklessly when the person is aware of, but consciously disregards a substantial and unjustifiable risk of injury or damage to another. Disregarding the risk must be a gross deviation from the standard of care that an ordinary person would use under all the circumstances.

A person acts maliciously when the person is motivated by ill will, hatred or personal spite.

If you find that the Defendant's retaliatory discharge of the Plaintiff was either intentional, reckless, malicious or fraudulent, you will have decided to award punitive damages. You will not assess the amount of punitive damages to award at this time. You will, however, report your finding to the court.

Verdict Form

Finally, ladies and gentlemen, we come to the point where we will discuss the form of your verdict and the process of your deliberations. You will be taking with you to the jury room a verdict form which reflects your findings. The verdict form reads as follows:

[Read Verdict Form]

You will be selecting a presiding juror after you retire to the jury room. That person will preside over your deliberations and be your spokesperson here in court. When you have completed your deliberations, your presiding juror will fill in and sign the verdict form.

Your verdict must represent the considered judgment of each of you. In order to return a verdict, it is necessary that each of you agree to that verdict. That is, your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgments. Each of you must decide the case for yourself, but do so only after an impartial

consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

We will be sending with you to the jury room all of the exhibits in the case. You may have not seen all of these previously and they will be there for your review and consideration. You may take a break before you begin deliberating but do not begin to deliberate and do not discuss the case at any time unless all nine of you are present together in the jury room. Some of you have taken notes. I remind you that these are for your own individual use only and are to be used by you only to refresh your recollection about the case. They are not to be shown to others or otherwise used as a basis for your discussion about the case.