

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

FRANCHISE RISK SOLUTIONS, INC.,)

Plaintiff,)

vs.)

CONIFER HOLDINGS, INC., BORIS)
MATTHEW PETCOFF, and)
SYCAMORE INSURANCE AGENCY,)
INC. d/b/a BLUE SPRUCE)
UNDERWRITERS,)

Defendants.)

No. 16-176-BC

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JURY INSTRUCTIONS

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IN GENERAL

Respective Duties of Judge and Jury

Members of the jury, now that you have heard all of the evidence and the arguments of the lawyers, it is my duty to instruct you on the law that applies to this case. You will be provided with a written copy of these jury instructions.

It is your duty to find the facts from all the evidence in the case. After you determine the facts, you must apply the law that has been given to you, whether you agree with it or not. You must not be influenced by any personal likes or dislikes, prejudice or sympathy. You must decide the case solely on the evidence before you and according to the law given to you.

Instructions To Be Considered As a Whole

All of the instructions are equally important. The order in which these instructions are given has no significance. You must follow all of the instructions and not single out some and ignore others.

Statements Of Counsel - Evidence Stricken Out - Insinuations of Questions

In reaching your verdict you may consider only the evidence that was admitted. Remember that any questions, objections, statements or arguments made by the attorneys during the trial are not evidence. If the attorneys have stipulated or agreed to any fact, however, you will regard that fact as having been proved.

Testimony that you have been instructed to disregard is not evidence and must not be considered. If evidence has been received only for a limited purpose, you must follow

the limiting instructions I have given you. You are to decide the case solely on the evidence received at trial.

Ordinary Observations and Experiences

Although you must only consider the evidence in this case in reaching your verdict, you are not required to set aside your common knowledge. You are permitted to weigh the evidence in the light of your common sense, observations and experience.

Each Defendant Entitled to Separate Consideration

There is more than one Defendant in this lawsuit. If you find that one Defendant is liable you are not required to return a verdict against all. You will decide each Defendant's case separately. Each Defendant is entitled to a fair and separate consideration. Unless you are instructed to the contrary, the instructions apply to the facts of each Defendant's case.

BURDEN OF PROOF - PREPONDERANCE OF EVIDENCE

In this action, the Plaintiff has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the following issues:

- Misappropriation of trade secrets
- Breach of fiduciary duty
- Aiding and abetting breach of fiduciary duty
- Conspiracy to breach fiduciary duty
- Fraud and/or misrepresentation
- Conspiracy for fraud and/or misrepresentation

- Violation of the Tennessee Commercial Computer Act
- Causation on the Plaintiff's claims of: fraud and/or misrepresentation, and violation of the Tennessee Commercial Computer Act
- Compensatory damages, or lost profits, or unjust enrichment

The term "preponderance of the evidence" means that amount of evidence that causes you to conclude that an allegation is probably true. To prove an allegation by a preponderance of the evidence, a party must convince you that the allegation is more likely true than not true.

If the evidence on a particular issue is equally balanced, that issue has not been proven by a preponderance of the evidence and the party having the burden of proving that issue has failed.

You must consider all the evidence on each issue.

With respect to each of the foregoing claims on which the Plaintiff has the burden of proof, you will now be provided definitions and the elements of those claims which the Plaintiff must prove under Tennessee law.

DEFINITIONS AND ELEMENTS OF CLAIM UNDER TENNESSEE UNIFORM TRADE SECRETS ACT

The Plaintiff claims Defendants misappropriated trade secrets from Plaintiff in violation of the Tennessee Uniform Trade Secrets Act. To prove this claim, Plaintiff must prove by a preponderance of the evidence:

1. Plaintiff had information that qualified as a trade secret;
2. One or more Defendants misappropriated that trade secret; and
3. Plaintiff suffered damages as a result.

The terms "trade secret" and "misappropriation" are defined as follows.

A "trade secret" is information, without regard to form, including, but not limited to, technical, non-technical or financial data, a formula, pattern, compilation, program, device, method, technique, process or plan that:

(a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from disclosure or use of the trade secret; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

"Misappropriation" of a trade secret means either:

(A) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(B) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) Used improper means to acquire knowledge of the trade secret; or

(ii) At the time of disclosure or use, knew or had reason to know that that person's knowledge of the trade secret was:

(a) Derived from or through a person who had utilized improper means to acquire it;

(b) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(c) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) Before a material change of the person's position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

BREACH OF FIDUCIARY DUTY; AND AIDING AND ABETTING

Definition and Elements of Breach of Fiduciary Duty

Franchise Risk asserts that prior to his resignation on September 23, 2015, Defendant Matt Petcoff breached his duties to Franchise Risk. To succeed on this claim, Plaintiff must prove by a preponderance of the evidence that while still employed by the Plaintiff, Matt Petcoff breached his fiduciary duty to the Plaintiff.

A "fiduciary" is someone who has a duty to act primarily for the benefit of another.

An employee under Tennessee law must act primarily for the benefit of the employer in matters within the scope of his employment. The employee must not engage in conduct that is adverse to the employer's interests. Although an employee may take steps to insure continuity in his livelihood in anticipation of resigning his position, he cannot feather his own nest at the expense of his employer while he is still on the payroll.

In addition to his duties as an employee of Franchise Risk, Matt Petcoff also owed certain duties to Franchise Risk by virtue of his position as the company's President. As its President, Defendant Matt Petcoff was a corporate officer of Plaintiff Franchise Risk Solutions, Inc. Mr. Petcoff owed Franchise Risk fiduciary duties to act at all times with the utmost good faith, loyalty, and honesty toward Franchise Risk, to give Franchise Risk the benefit of his care and best judgment, and to act primarily in the interest of Franchise Risk. An officer of a corporation has a fiduciary duty to that corporation as long as he or she remains employed by the corporation.

It is a breach of fiduciary duty for an employee to solicit co-workers to leave their jobs to work for a competitor. An employee may engage in "brief, non-specific, strictly hypothetical" queries of a fellow employee or client, but he cannot actively solicit them.

It is lawful, however, for an employee, including an officer of a corporation, to make arrangements to compete with his or her employer even before termination from or resignation of employment.

This fiduciary duty ends when the employment relationship ends, at which time, unless he has agreed to be bound by a non-compete, the former employee, including a former officer, is free to go into direct competition with his former employer. That is, the fact that one was once a director or officer of a corporation does not preclude his engaging in a business similar to that conducted by the company. It is recognized that in doing so they can use in their own enterprise the experience and knowledge they gained while working for their former corporation, and that they can, at least in the absence of a

contract provision to the contrary, solicit the customers of their former corporation for business unless the customer list is itself confidential.

Elements of Aiding and Abetting Breach of Fiduciary Duty Claim

If you find a breach of fiduciary duty by Mr. Petcoff, then you must consider whether the Defendant Conifer is liable for aiding and abetting such a breach, and/or whether the Defendants conspired with Mr. Petcoff. (I will instruct you in a later section of these instructions separately on the law of conspiracy.)

With respect to Plaintiff's claims that Defendant Conifer aided and abetted Defendant Petcoff in his alleged breach of fiduciary duties, Plaintiff must prove the following by a preponderance of the evidence:

1. While still employed by the Plaintiff, Matt Petcoff breached his fiduciary duty to the Plaintiff;
2. Conifer knew of the conduct by Matt Petcoff that allegedly constitutes a breach of fiduciary duty; and
3. Conifer gave substantial assistance or encouragement to Matt Petcoff in this conduct.

There can be no liability for aiding and abetting a breach of fiduciary duty if you do not find that an actionable breach of fiduciary duty occurred.

DEFINITION AND ELEMENTS OF FRAUD AND/OR MISREPRESENTATION

The Plaintiff claims that Defendant Matt Petcoff committed fraud and/or misrepresentation, and that the Defendants are jointly liable for conspiring with Mr.

Petcoff. (I will instruct you in a later section of these instructions separately on the law of conspiracy.) To succeed on this claim, the Plaintiff must prove the following.

1. Defendant Matt Petcoff made a representation of a present or past material fact; and
2. The representation was false; and
3. Defendant Matt Petcoff knew that the representation was false when it was made or the Defendant made the representation recklessly without knowing whether it was true or false; and
4. Defendant Matt Petcoff intended that the Plaintiff rely upon the representation and act or not act in reliance on it; and
5. The Plaintiff did not know that the representation was false and was justified in relying upon the truth of the representation; and
6. As a result of Plaintiff's reliance upon the truth of the representation, the Plaintiff sustained damage.

Nondisclosure of Known Facts

Additionally, the failure of one party to disclose material facts known by that party and not the other party is not fraud unless there is some relationship between the parties that creates a duty to disclose those facts.

There is a duty to disclose known facts when the party having knowledge of the facts is in a fiduciary or a confidential relationship with the other party. There is a fiduciary or confidential relationship when one person may reasonably trust or have confidence in the integrity and fidelity of another.

DEFINITION AND ELEMENTS OF CIVIL CONSPIRACY

Franchise Risk asserts that Defendants are jointly liable as members of a civil conspiracy with Matt Petcoff in breaching his fiduciary duties, and in fraud and/or misrepresentation. To establish a civil conspiracy, Franchise Risk must prove the following elements:

1. A common design between two or more persons, each having the intent and knowledge of the other's intent;
2. To accomplish by concerted action an unlawful purpose, or a lawful purpose by unlawful means;
3. An overt act in furtherance of the conspiracy; and
4. Resulting injury.

The conspiracy need not be formal, the understanding may be a tacit one, and it is not essential that each conspirator have knowledge of the details of the conspiracy. Each participant in a conspiracy is responsible for everything done by other members of the conspiracy in furtherance of the conspiracy. In other words, each conspirator is liable for damage caused by the others.

The essential element of a conspiracy is an agreement between two or more persons and one without knowledge of the object and purpose of a conspiracy cannot be a co-conspirator; he cannot agree, either expressly or tacitly, to the commission of a wrong which he knows not of. Also, if the underlying wrongful conduct is found not to have occurred or found to be not actionable, then the conspiracy claim must also fail.

DEFINITION AND ELEMENTS OF CLAIM UNDER TENNESSEE PERSONAL AND COMMERCIAL COMPUTER ACT

Plaintiff claims that each Defendant violated the Tennessee Personal and Commercial Computer Act. To succeed on this claim, Plaintiff must prove the following by a preponderance of the evidence:

1. That one or more of the Defendants intentionally and without authorization, directly or indirectly made or caused to be made an unauthorized copy, in any form, of Plaintiff's computer data, computer programs, or computer software;
2. That such computer data, computer programs, or computer software, it resided in, was communicated by, or was produced by Plaintiff's computer or computer network; and
3. Plaintiff suffered damages as a result.

RESPONDEAT SUPERIOR

Franchise Risk claims that certain Conifer or Blue Spruce employees were acting within the scope of their employment at the time that they allegedly copied or directed the copying of Franchise Risk computer files. If you find that these employees did copy or direct the copying of Franchise Risk computer files, and that they were acting in the scope of employment at the time they did so, then you should consider their actions to be actions committed by Conifer or Blue Spruce, as the case may be.

Conduct of an employee is within the scope of employment if (a) it is of the kind the employee is employed to perform; (b) it occurs substantially within the authorized

time and place limits; and (c) it is motivated, at least in part, by a purpose to serve the employer. An employee's conduct is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time and place limits, or too little motivated by a purpose to serve the employer.

Conduct of an employee also is within the scope of employment when the employer has consented to or ratified the employee's actions.

**CAUSATION: CLAIM FOR FRAUD AND/OR MISREPRESENTATION, AND
CLAIM FOR VIOLATION OF TENNESSEE PERSONAL AND COMMERCIAL
COMPUTER ACT**

Plaintiff's claim for fraud and/or misrepresentation, and Plaintiff's claim of violation of the Tennessee Personal and Commercial Computer Act require that it prove two types of causation: cause in fact and legal cause. Cause in fact and legal cause are distinct elements and both must be proven by a preponderance of the evidence for Plaintiff to succeed on any of its claims.

Conduct is a cause in fact of Plaintiff's injury if, as a factual matter, it directly contributed to the Plaintiff's injury and without it Plaintiff's injury would not have occurred. It is not necessary that a Defendant's act be the sole cause of Plaintiff's injury, only that it be a cause.

Once you have determined that a Defendant is a cause in fact of the Plaintiff's injury, you must decide whether the Defendant's conduct was also a legal cause of Plaintiff's injury.

The law in Tennessee sets out two requirements to determine whether an act or omission was a legal cause of the injury or damage.

1. The conduct must have been a substantial factor in bringing about the harm being complained of; and,

2. The harm giving rise to the action could have been reasonably foreseen or anticipated by a person of ordinary intelligence and care.

To be a legal cause of an injury there is no requirement that the cause be the only cause, the last act, or the one the nearest to the injury, so long as it is a substantial factor in producing the injury or damage and so long as the injury or damage would not have occurred but for that cause.

COMPENSATORY DAMAGES

If, under the Court's instructions, you find that the Plaintiff is entitled to damages, then you must award Plaintiff damages that will reasonably compensate the Plaintiff for claimed loss or harm which has been proven by a preponderance of the evidence, provided you also find it was or will be suffered by the Plaintiff and was legally caused by the act or omission upon which you base your finding of liability.

The burden is on the Plaintiff to prove by a preponderance of evidence the existence of, and the amount of, any damages.

Plaintiff must prove the amount of any damages with a reasonable degree of certainty, although mathematical certainty is not required; damages that are remote or speculative may not be awarded. When it is shown that some damage has been caused by

a Defendant's wrongful conduct, damages should be awarded even though the amount of damage cannot be proven exactly or with certainty. Plaintiff is entitled to only those proven damages that flow from proven wrongful conduct.

In determining the amount of damages, you should consider the following elements:

- (1) Compensation for loss that has been or will be suffered by Franchise Risk; and
- (2) Damages measured by the profit or benefit that the Defendants gained; and
- (3) The compensation paid by Franchise Risk to Defendant Matthew Petcoff during the period when his breach of fiduciary duty occurred.

In determining damages, if you decide that the Plaintiff is reasonably certain to sustain loss or harm in the future as a result of the injury in question, you must compensate for that future loss or harm. You may not include speculative damages, which is compensation for future loss or harm that, although possible, is conjectural or not reasonably certain.

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 a 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 are reserved for egregious conduct. Punitive damages may be considered if, and only if, the Plaintiff has shown by clear and convincing evidence that a Defendant has acted 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.

A person acts fraudulently when: (1) the person intentionally either misrepresents an existing material fact or causes a false impression of an existing material fact to mislead or to obtain an unfair or undue advantage; and (2) another person suffers injury or loss because of reasonable reliance upon that representation.

If you decide to award punitive damages, you will not assess an amount of punitive damages at this time. You will, however, report your finding to the Court.

WILLFUL AND MALICIOUS MISAPPROPRIATION OF TRADE SECRETS

You may consider an award of damages for willful and malicious misappropriation of trade secrets only if you find that the Plaintiff has suffered actual damage as a legal result of a Defendant's fault and you have made an award for compensatory damages.

"Willful" and "malicious" are defined as: such intentional acts or gross neglect of duty as to evince a reckless indifference of the rights of others on the part of the wrongdoer, and an entire want of care so as to raise the presumption that the person at fault is conscious of the consequences of his carelessness.

EVIDENCE

You are to decide this case only from the evidence which was presented at this trial. The evidence consists of:

1. The sworn testimony of the witnesses who have testified, both in person and by deposition;
2. The exhibits that were received and marked as evidence; and
3. Any facts to which all the lawyers have agreed or stipulated.

Direct and Circumstantial Evidence

There are two kinds of evidence; direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of a witness about what the witness personally observed.

Circumstantial evidence is indirect evidence that gives you clues about what happened. Circumstantial evidence is proof of a fact, or a group of facts, that causes you to conclude that another fact exists. It is for you to decide whether a fact has been proved by circumstantial evidence. If you base your decision upon circumstantial evidence, you must be convinced that the conclusion you reach is more probable than any other explanation.

For example, if a witness testified that the witness saw it raining outside, that would be direct evidence that it was raining. If a witness testified that the witness saw someone enter a room wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

You are to consider both direct and circumstantial evidence. 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.

In making your decision, you must consider all the evidence in light of reason, experience and common sense.

Deposition Testimony

Certain testimony has been presented by deposition. A deposition is testimony taken under oath before the trial and preserved in writing or on videotape. You are to consider that testimony as if it had been given in court.

Credibility of Witness

You are the sole and exclusive judges of the credibility or believability of the witnesses who have testified in this case. You must decide which witnesses you believe and how important you think their testimony is. You are not required to accept or reject everything a witness says. You are free to believe all, none, or part of any person's testimony.

In deciding which testimony you believe, you should rely on your own common sense and everyday experience. There is no fixed set of rules to use in deciding whether you believe a witness, but it may help you to think about the following questions:

1. Was the witness able to see, hear, or be aware of the things about which the witness testified?
2. How well was the witness able to recall and describe those things?
3. How long was the witness watching or listening?
4. Was the witness distracted in any way?
5. Did the witness have a good memory?
6. How did the witness look and act while testifying?
7. Was the witness making an honest effort to tell the truth, or did the witness evade questions?
8. Did the witness have any interest in the outcome of the case?
9. Did the witness have any motive, bias or prejudice that would influence the witness' testimony?

10. How reasonable was the witness' testimony when you consider all of the evidence in the case?

11. Was the witness' testimony contradicted by what that witness has said or done at another time, by the testimony of other witnesses, or by other evidence?

12. Has there been evidence regarding the witness' intelligence, respectability, or reputation for truthfulness?

13. Has the witness' testimony been influenced by any promises, threats, or suggestions?

14. Did the witness admit that any part of the witness' testimony was not true?

Discrepancies in Testimony

There may be discrepancies or differences within a witness' testimony or between the testimony of different witnesses. This does not necessarily mean that a witness should be disbelieved. Sometimes when two people observe an event they will see or hear it differently. Sometimes a witness may have an innocent lapse of memory. Witnesses may testify honestly but simply may be wrong about what they thought they saw or remembered. You should consider whether a discrepancy relates to an important fact or only to an unimportant detail.

Weighing Conflicting Testimony

Although you must consider all of the evidence, you are not required to accept all of the evidence as true or accurate.

You should not decide an issue by the simple process of counting the number of witnesses who have testified on each side. You must consider all the evidence in the

case. You may decide that the testimony of fewer witnesses on one side is more convincing than the testimony of more witnesses on the other side.

Witness Willfully False

You may conclude that a witness deliberately lied about a fact that is important to your decision in the case. If so, you may reject everything that witness said. On the other hand, if you decide that the witness lied about some things but told the truth about others, you may accept the part you decide is true and you may reject the rest.

Absence of Witness or Evidence

Under certain circumstances you may consider the absence of evidence or a witness. You may conclude that the evidence or testimony of the witness would be adverse to that party who failed to offer it only if you find all of the following elements:

1. That it was within the power of a party to offer evidence or produce a witness on an issue in this case, but that party has failed to offer the evidence or to produce the witness; and
2. The evidence or witness was uniquely under the control of the party and could have been produced by the exercise of reasonable diligence; and
3. The evidence or witness was not equally available to an adverse party or the witness was likely to be biased against an adverse party because of a relationship to the party who would be expected to produce the witness; and
4. The evidence or witness' testimony would not be merely cumulative; and

5. A reasonable person under the same or similar circumstances would have offered the evidence or produced the witness if the evidence or testimony would be favorable; and

6. No reasonable excuse for the failure has been shown.

You must find all of these elements before you can conclude that the evidence or testimony of a witness would be adverse to a party.

Spoliation of Evidence

If you determine that any of the Defendants intentionally, and in circumstances indicating a desire to suppress the truth, deleted, destroyed, lost, altered, or concealed emails, text messages, or other documents relevant to Plaintiff's claims, then you may infer that such documents would have been unfavorable to the responsible Defendants.

Expert Testimony - Determination of Weight

Usually witnesses are not permitted to testify as to opinions or conclusions. However, a witness who has scientific, technical, or other specialized knowledge, skill, experience, training, or education may be permitted to give testimony in the form of an opinion. Those witnesses are often referred to as "expert witnesses."

You should determine the weight that should be given to each expert's opinion.

You should consider:

1. The education, qualifications, and experience of the witness; and
2. The credibility of the witness; and
3. The facts relied upon by the witness to support the opinion; and
4. The reasoning used by witness to arrive at the opinion.

You should consider each expert opinion and give it the weight, if any, that you think it deserves. You are not required to accept the opinion of any expert.

Hypothetical Question

An expert witness was asked to assume that certain facts were true and to give an opinion based upon that assumption. This is called a hypothetical question. You must determine if any fact assumed by the witness has not been established by the evidence and the effect of that omission, if any, upon the value of the opinion.

ALL INSTRUCTIONS NOT NECESSARILY APPLICABLE

The Court has given you various rules of law to help guide you to a just and lawful verdict. Whether some of these instructions will apply will depend upon what you decide are the facts. The Court's instructions on any subject including instructions on damages, must not be taken by you to indicate the Court's opinion of the facts you should find or the verdict you should return.

DELIBERATIONS

Use of Juror Notes (After Trial)

Some of you may have taken notes during the trial. Once you retire to the jury room you may refer to your notes, but only to refresh your own memory of the witnesses' testimony. You are free to discuss the testimony of the witnesses with your fellow jurors, but each of you must rely upon your own individual memory as to what a witness did or did not say.

In discussing the testimony, you may not read your notes to your fellow jurors or otherwise tell them what you have written. You should never use your notes to persuade or influence other jurors. Your notes are not evidence. Your notes should carry no more weight than the unrecorded recollection of another juror.

How Jurors Should Approach Their Task

Your attitude and conduct at the beginning of your deliberations are very important. It is rarely productive for any juror to immediately announce a determination to hold firm for a certain verdict before any deliberations or discussions take place. Taking that position might make it difficult for you to consider the opinions of your fellow jurors or change your mind, even if you later decide that you might be wrong. Please remember that you are not advocates for one party or another. You are the judges of the facts in this case.

Each Juror Should Deliberate and Vote On Each Issue To Be Decided

Each of you should deliberate and vote on each issue to be decided.

Before you return your verdict, however, each of you must agree on the answer to each question so that each of you will be able to state truthfully that the verdict is yours.

Instructions as to Unanimous Verdict

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

It is your duty to consult with one another and to reach an agreement if you can do so without violence to individual judgment. 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 to change your opinion if you are convinced that it is not correct. 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.

Chance or Quotient Verdict Prohibited

The law forbids you to determine any issue in this case by chance. If you decide that a party is entitled to recover damages, you must not arrive at the amount of those damages by agreeing in advance: 1) to use each juror's independent estimate of the amount to be awarded; 2) to total those amounts; 3) to divide the total by twelve; and 4) to make the resulting average the amount that you award.

Questions During Deliberations

If a question arises during deliberations and you need further instructions, please print your question on a sheet of paper, knock on the door of the jury room, and give the question to my court officer.

I will read your question and I may call you back into the courtroom to try to help you. Please understand that I may only answer questions about the law and I cannot answer questions about the evidence.

Prohibited Research and Communication

I remind you that you are to decide this case based only on the evidence you have heard in court and on the law I have given you. You are prohibited from considering any other information and you are not to consult any outside sources for information. You

must not communicate with or provide any information, photographs or video to anyone by any means about this case or your deliberations. You may not use any electronic device or media, such as a telephone, cell phone, smart phone or computer; the Internet, any text or instant messaging service; or any chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate with anyone or to conduct any research about this case.

CONCLUDING INSTRUCTION

You will now retire and select one of you to be the presiding juror for your deliberations. As soon as all of you have agreed upon a verdict, the presiding juror will complete and sign the verdict form and you will return with it to this room.

You may deliberate only when all of you are present in the jury room. You may not resume your deliberations after any breaks until all of you have returned to the jury room.