

MEMBERS OF THE JURY, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true and/or that a person would have given certain testimony.

Any evidence that was admitted for a limited purpose can only be considered by you for the limited purpose for which it was admitted.

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements, interim statements, and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this an inference. A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

You may have heard the phrases “direct evidence” and “circumstantial evidence.” “Direct evidence” is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. “Circumstantial evidence” is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, “direct evidence” that it is raining is testimony from a witness who says, I was outside a minute ago and I saw it raining. “Circumstantial evidence” that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

You may consider statements given by a party or by a witness under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath, or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement, or conduct, only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statement[s], or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

It is proper for a lawyer to meet with any witness in preparation for trial.

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

Certain summaries of punch in/out times for employees in the Custom Audio Department are in evidence. The original materials used to prepare those summaries also are in evidence. It is up to you to decide if the summaries are accurate.

Highlighted copies of summaries of these time-records have been shown to you. These highlighted summaries are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

In this case defendant, Abt Electronics, Inc., is a corporation. All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.

In this case, plaintiff, Jillian Watson voluntarily dismissed her separate claim for sexual harassment and, therefore, that claim is not before you for consideration, and you may not award any damages or other relief to Ms. Watson based on that dismissed claim. Do not speculate about the reason why Ms. Watson dismissed that claim. You should decide this case only on the remaining claim of retaliation.

In her claim of retaliation, Ms. Watson claims that she was terminated by Abt because she complained about sexual harassment in the form of telling one of her supervisors, Gregory Meinholz, to stop harassing her. To succeed on this claim, Ms. Watson must prove by a preponderance of the evidence each of the following:

1. Ms. Watson had a reasonable, good faith belief that Gregory Meinholz was sexually harassing her. This does not, however, require Ms. Watson to show that what she believed was correct;
2. Ms. Watson told Gregory Meinholz to stop; and
3. Abt would not have terminated Ms. Watson when it did if she had not told Mr. Meinholz to stop, but everything else had been the same.

If you find that Ms. Watson has proved each of these three elements by a preponderance of the evidence, then you must find for her. However, if you find that Ms. Watson did not prove any one of these elements by a preponderance of the evidence, then you must find for Abt.

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.

In deciding Ms. Watson's claim, you should not concern yourselves with whether Abt's actions were wise, reasonable, or fair. Rather, your concern is only whether Ms. Watson has proved that Abt terminated Ms. Watson's employment in retaliation for complaining about harassment.

If you find that Ms. Watson has proved her claim against Abt, then you must determine what amount of damages, if any, she is entitled to recover. Ms. Watson must prove her damages by a preponderance of the evidence.

If you find that Ms. Watson has failed to prove her claim, then you will not consider the question of damages.

You may award compensatory damages only for injuries that Ms. Watson has proved by a preponderance of the evidence were caused by Abt's wrongful conduct.

Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

In calculating damages, you should not consider the issue of lost wages and benefits. The court will calculate and determine any damages for past or future lost wages and benefits. You should consider the following types of compensatory damages, and no others:

- The mental/emotional pain and suffering that Ms. Watson has experienced and is reasonably certain to experience in the future. No evidence of the dollar value of mental/emotional pain and suffering has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate Ms. Watson for the injury she has sustained.

If you find for Ms. Watson, you may, but are not required to, assess punitive damages against Abt. The purpose of punitive damages is to punish a defendant for its conduct and to serve as an example or warning to Abt and others not to engage in similar conduct in the future.

Ms. Watson must prove by a preponderance of the evidence that punitive damages should be assessed against Abt. You may assess punitive damages only if you find that the conduct of Abt's managerial employees or officers was in reckless disregard of Ms. Watson's rights. An action is in reckless disregard of her rights if taken with knowledge that it may violate the law.

Ms. Watson must prove by a preponderance of the evidence that Abt's managerial employees or officers acted within the scope of their employment and in reckless disregard of her right not to be retaliated against. You should not, however, award her punitive damages if Abt proves that it made a good faith effort to implement an anti-retaliation policy.

If you find that punitive damages are appropriate, 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 either party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of Abt's conduct;
- the impact of Abt's conduct on Ms. Watson;
- the relationship between Ms. Watson and Abt;
- the likelihood that Abt would repeat the conduct if an award of punitive damages is not made;
- Abt's financial condition;
- the relationship of any award of punitive damages to the amount of actual harm that Ms. Watson suffered.

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

An official form of verdict has been prepared for you. The official verdict form contains questions for you to answer.

[Form of verdict read.]

The official verdict form will be brought to you in the jury room, along with copies of these instructions. When you have reached unanimous agreement on the verdict, your presiding juror will fill in and date the appropriate form, and all of you will sign it.

I do not anticipate that you will need to communicate with me during your deliberations. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against any party, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.