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**CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JILL BAKER,)
) Civil No. 4-99-cv-30529
Plaintiff,)
)
vs.) INSTRUCTIONS TO THE JURY
)
NUCKOLLS CONCRETE SERVICES,)
INC. d/b/a AMERICAN CONCRETE)
PRODUCTS, INC.,)
)
Defendant.)

MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE
FOLLOWING INSTRUCTIONS:

Plaintiff Jill Baker has alleged that she has been the subject of gender discrimination, that is, discriminated against because she is a woman, by the defendant, Nuckoll's Concrete Services, Inc., in violation of federal and state law.

The defendant is plaintiff's former employer, and a producer of ready-mix concrete. Plaintiff was employed by defendant as a cement truck driver. During her six-month probationary period, plaintiff was involved in an accident in a company vehicle and her employment was terminated by the defendant.

Plaintiff claims that she was discriminated against regarding her treatment at work and ultimately in her termination. Defendant Nuckolls Concrete Services contends that plaintiff was not treated differently on the basis of gender than any other

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person to whom she was similarly situated, and therefore denies that she was discriminated against at work or in her termination.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of the trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed. In considering the instructions, you will attach no importance or significance whatever to the order in which they are given.

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

You must follow the instructions now given you regardless of your opinion of what the law ought to be. You need not be concerned with the wisdom of any rule of law.

PAGE TWO OF INSTRUCTION NO. 1

Finally, as judges of the facts your duty is to decide all fact questions. In doing so, do not be influenced by any personal likes or dislikes, sympathy, bias, prejudice or emotions.

INSTRUCTION NO. 2

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition;
2. Exhibits received by the Court.
3. Stipulations which are agreements between the parties. If the parties stipulate to a fact, you should treat that fact as having been proved.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence.

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 3

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence, but if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witness' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witness' appearance, conduct, age, intelligence, memory, and knowledge of the facts;
3. The witness' interest in the trial, their motive, candor, bias, and prejudice; and
4. Whether the witness said something different at an earlier time.

INSTRUCTION NO. 4

Whenever a party must prove something, they must do so by a preponderance of the evidence unless I instruct you differently.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 5

In this case plaintiff Jill Baker is an individual and defendant Nuckolls Concrete Services is a corporation. Each party has equal rights in court. This case should be determined by you with the same fairness and consideration as though it were a case between individuals, and no inference or presumption is to be drawn against the defendant that would be improper in a case between individuals. All parties in this case are entitled to equal justice in your hands and to a fair and impartial consideration of the entire case.

INSTRUCTION NO. 6

A corporation can act only through its officers, employees, or other agents. Any acts or omissions of an officer, employee, or agent of a corporation are held in the law to be the acts or omissions of the corporation, and these acts or omissions are chargeable to and imputed to the corporation. Whenever in these instructions reference is made to acts or omissions of any party to this lawsuit, such reference should be construed to refer to the acts or omissions, if any, of its officers, employees, or agents.

INSTRUCTION NO. 7

Title VII of the Civil Rights Act of 1964 provides that it is unlawful for an employer to discharge or otherwise discriminate against any person because of that person's gender.

INSTRUCTION NO. 8

On plaintiff's claim of gender discrimination, your verdict must be for plaintiff and against defendant Nuckolls Concrete Services if all the following elements have been proved by the preponderance of the evidence:

1. Defendant terminated plaintiff from her position;
and
2. Plaintiff's gender was a motivating factor in defendant's actions.

You may find that plaintiff's gender was a motivating factor in defendant's decision if it has been proved by a preponderance of the evidence that defendant's stated reason for its decision is not the true reason, but is a "pretext" to hide discriminatory motivation.

If either of the above elements has not been proved by the preponderance of the evidence, your verdict must be for defendant and you need not proceed further in considering this claim. If plaintiff has proved both of these elements, then you will consider the issue stated in Instruction No. 9 with respect to this claim.

INSTRUCTION NO. 9

If you find in favor of the plaintiff under Instruction No. 8, then you must answer the following question in the verdict forms: Has it been proved by the preponderance of the evidence that defendant Nuckolls Concrete Services would have taken the same employment action concerning plaintiff regardless of her gender? Defendant has the burden to prove this proposition. If you answer "yes," plaintiff cannot recover damages on her gender discrimination claim.

INSTRUCTION NO. 10

You may not return a verdict for plaintiff just because you might disagree with defendant's decision or believe it to be harsh or unreasonable. An employer is entitled to make its own subjective personnel decisions and can make employment decisions for any reason that does not violate the law concerning employment discrimination.

INSTRUCTION NO. 11

If you find in favor of plaintiff, and if you answer "no" in response to Instruction No. 9, then you must award plaintiff such sum as you find by the preponderance of the evidence will fairly and justly compensate her for any damages you find she sustained as a direct result of the defendant's actions. Plaintiff claims damages for past mental or emotional pain and suffering resulting from her termination. Mental or emotional pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

The amount, if any, you award for past emotional pain and suffering cannot be measured by an exact or mathematical standard; the determination of the amount must rest in the sound discretion of the jury. Such discretion must not be exercised arbitrarily or out of passion or sympathy or prejudice for or against the parties, but must be based on a fair, intelligent, dispassionate and impartial consideration of the evidence. The amount you assess for any item of damage must not exceed the amount caused by the defendant as proved by the evidence.

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

INSTRUCTION NO. 12

In addition to actual damages, the law permits the jury under certain circumstances to award an injured person punitive damages in order to punish the defendant for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct.

If you find in favor of plaintiff and against defendant in accordance with these Instructions, and if you find defendant acted with malice or with reckless indifference to plaintiff's rights, then in addition to any damages to which you find plaintiff entitled, you may, but are not required to, award plaintiff an additional amount as punitive damages if you find it is appropriate to punish the defendant or to deter defendant and others from like conduct in the future. Whether to award plaintiff punitive damages and the amount of those damages, is within your discretion.

INSTRUCTION NO. 13

For the purposes of imposing punitive damages, "malice" means the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury. "Reckless indifference" means acting with knowledge of a substantial risk of harm to another. The terms "malice" and "reckless indifference" pertain to Nuckolls Concrete Services' knowledge that it may be acting in violation of federal law.

INSTRUCTION NO. 14

An employer may be liable for punitive damages resulting from the discriminatory or unlawful employment decisions of its managerial agents. However, you may not award punitive damages against defendant Nuckolls Concrete Services if you find that Nuckolls Concrete Services made good faith efforts to comply with the laws against employment discrimination and to prevent and promptly correct any sexually discriminatory behavior, and that the managers who made the employment decision affecting plaintiff acted contrary to those efforts.

INSTRUCTION NO. 15

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

INSTRUCTION NO. 16

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members foreperson of the jury. The person so elected is responsible for the orderly, proper and free discussion of the issues by any juror who wishes to express his or her views. The foreperson will supervise the balloting and sign the interrogatories that are in accord with your decision and will also sign any written inquiries addressed to the Court.

Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion in a case or determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved, and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans or advocates. You are judges--judges of the facts. Your sole interest is to ascertain the truth.


INSTRUCTION NO. 17

The verdict must represent the considered judgment of each juror. 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 judgment. An inconclusive trial is always undesirable. 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.

Submitted to you with these instructions is the special verdict form. After you have agreed and appropriately signed the verdict form in accordance with the directions contained therein, inform the jury officer outside the room. You will have the verdict signed only by one of your number whom you will have selected as your foreperson and return with it into court.

Dated this 19th day of April, 2001.



ROSS A. WALTERS
CHIEF UNITED STATES MAGISTRATE JUDGE