

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

ESTATE OF DOUGLAS M. WEST, by the co-  
executors Douglas J. West and Mark P. West,

Plaintiff/Counter-Defendant,

vs.

DOMINA LAW GROUP, PC, LLO;  
CHRISTIAN WILLIAMS; DAVID DOMINA;  
and BRIAN JORDE,

Defendants/Counter-Plaintiffs.

1:16-cv-30-HCA

**FINAL JURY INSTRUCTIONS**

Members of the jury, the instructions I gave at the beginning of the trial and during the trial are still in effect. Now I am going to give you some additional instructions.

You have to follow all of my instructions – the ones I gave you earlier, before and during the trial, as well as those I give you now. Do not single out some instructions and ignore others, because they are all important. This is true even though I am not going to repeat some of the instructions I gave you at the beginning of the trial. I have repeated several instructions from the preliminary instructions in this final set. That does not make them more important than the other instructions I have given you.

You will have copies of all of the written instructions in the jury room. Remember, you have to follow all instructions, no matter when I give them, whether or not you have written copies.

## **FINAL INSTRUCTION NO. 1**

Your duty is to decide what the facts are from the evidence. You are allowed to consider the evidence in the light of your own observations and experiences. After you have decided what the facts are, you will have to apply those facts to the law that I give you in these and in my other instructions. That is how you will reach your verdict. Only you will decide what the facts are. However, you must follow my instructions, whether you agree with them or not. You have taken an oath to follow the law that I give you in my instructions.

Do not let sympathy, or your own likes or dislikes, influence you. The law requires you to come to a just verdict based only on the evidence, your common sense, and the law that I give you in my instructions, and nothing else.

Nothing I said or did during this trial is meant to suggest what I think of the evidence or what I think your verdict should be.

## **FINAL INSTRUCTION NO. 2**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

### **FINAL INSTRUCTION NO. 3**

When I use the word “evidence,” I mean the testimony of witnesses; documents and other things I admitted as exhibits; facts that I tell you the parties have agreed are true; and any other facts that I tell you to accept as true.

Some things are not evidence. I will now tell you what is not evidence:

1. Lawyers’ statements, arguments, questions, and comments are not evidence.
2. Documents or other things that might be in court or talked about, but that I do not admit as exhibits, are not evidence.
3. Objections are not evidence. Lawyers have a right – and sometimes a duty – to object when they believe something should not be a part of the trial. Do not be influenced one way or the other by objections. If I sustain a lawyer’s objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you have to ignore the question or the exhibit, and you must not try to guess what the information might have been.
4. Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence, and you must not consider them.
5. Anything you see or hear about this case outside the courtroom is not evidence, and you must not consider it unless I specifically tell you otherwise.

Also, I might tell you that you can consider a piece of evidence for one purpose only, and not for any other purpose. If that happens, I will tell you what purpose you can consider the evidence for and what you are not allowed to consider it for. You need to pay close attention when I give an instruction about evidence that you can consider for only certain purposes, because you might not have that instruction in writing later in the jury room.

**PAGE TWO OF FINAL INSTRUCTION NO. 3**

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You should not be concerned with those terms, since the law makes no distinction between the weight to be given to direct and circumstantial evidence.

#### **FINAL INSTRUCTION NO. 4**

You will have to decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved by the greater weight of the evidence, if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

**FINAL INSTRUCTION NO. 5**

The parties have stipulated -- that is, they have agreed -- that certain facts are as counsel has stated. You must, therefore, treat those facts as having been proved.

**FINAL INSTRUCTION NO. 6**

Testimony was presented to you in the form of a deposition. A deposition is the recorded answers a witness made under oath to questions asked by lawyers before trial. You should consider the deposition testimony, and judge its credibility, as you would that of any witness who testified here in person.

**FINAL INSTRUCTION NO. 7**

During the trial, you have heard the word “interrogatory.” An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

### **FINAL INSTRUCTION NO. 8**

You heard testimony from persons described as experts (Mark McCormick and Steve Wandro). Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

An expert witness may have been asked to assume certain facts are true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

**FINAL INSTRUCTION NO. 9**

The fact that a defendant is a professional corporation should not affect your decision. All persons are equal before the law, and professional corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

**FINAL INSTRUCTION NO. 10**

A professional corporation acts only through its agents or employees and any agent or employee of a professional corporation or organization may bind the professional corporation by acts and statements made while acting within the scope of the authority delegated to the agent by the professional corporation or organization, or within the scope of his or her duties as an employee of the professional corporation or organization. The parties agree that Christian Williams, Brian Jorde and David Domina were acting within the scope of their authority and duties as employees of Domina Law Group PC LLO.

### **FINAL INSTRUCTION NO. 11**

The Estate of Douglas M. West must prove all of the following propositions:

1. The parties have stipulated that an attorney-client relationship existed between Douglas M. West and Christian Williams, David Domina, and Brian Jorde for the disputed matter.

2. The Defendants were negligent in the following way: In failing to fully advise Douglas M. West of the consequences of the dissolution proceedings in conjunction with opportunities to sell Douglas M. West's ownership interest in Western Marketing to third-parties, including Mark West, and the Buy-Sell Agreement between Douglas M. West, Mark Finken and Western Marketing.

3. The negligence was a cause of the Estate of Douglas M. West's damage.

4. The amount of damage.

If the Estate of Douglas M. West has failed to prove any of these propositions, the Estate of Douglas M. West is not entitled to damages. If the Estate of Douglas M. West has proved all of these propositions, the Estate of Douglas M. West is entitled to damages in some amount.

**FINAL INSTRUCTION NO. 12**

An attorney must use the degree of skill, care and learning ordinarily possessed and exercised by other attorneys in similar circumstances.

A violation of this duty is negligence.

**FINAL INSTRUCTION NO. 13**

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

**FINAL INSTRUCTION NO. 14**

Plaintiff must also prove that Defendants failed to fully advise Douglas M. West of material information and that disclosure of the material information would have led a reasonable client in Douglas M. West's position to choose a different method to dispose of his shares of Western Marketing Associates.

**FINAL INSTRUCTION NO. 15**

The Estate of Douglas M. West may recover the amount that Douglas M. West would have received for his stock in Western Marketing Associates had Defendants not been negligent.

## **FINAL INSTRUCTION NO. 16**

For its claim against the Estate of Douglas M. West, Domina Law Group must prove all of the following propositions:

1. The parties stipulated that Douglas M. West and the Domina Law Group entered into a contract for the provision of legal services.
2. The terms of the contract.
3. The Domina Law Group has done what the contract requires.
4. The Estate of Douglas M. West has breached the contract.
5. The amount of any damage the Estate of Douglas M. West has caused.

If the Domina Law Group has failed to prove any of these propositions, the Domina Law Group is not entitled to damages. If the Domina Law Group has proved all of these propositions, the Domina Law Group is entitled to damages in some amount.

## **FINAL INSTRUCTION NO. 17**

In determining the terms of the contract you may consider the following:

1. The intent of the parties along with a reasonable application of the surrounding circumstances.

2. The intent expressed in the language used prevails over any secret intention of either party.

3. The intent may be shown by the practical construction of a contract by the parties and by the surrounding circumstances.

4. You must attempt to give meaning to all language of a contract. Because an agreement is to be interpreted as a whole, assume that all of the language is necessary. An interpretation which gives a reasonable, effective meaning to all terms is preferred to an interpretation which leaves a part of the contract unreasonable or meaningless.

5. The meaning of a contract is the interpretation a reasonable person would give it if they were acquainted with the circumstances both before and at the time the contract was made.

6. Ambiguous language in a written contract is interpreted against the party who selected it.

7. Where general and specific terms in the contract refer to the same subject, the specific terms control.

## **FINAL INSTRUCTION NO. 18**

A breach of the contract occurs when a party fails to perform a term of the contract.

**FINAL INSTRUCTION NO. 19**

The measure of damages for breach of a contract is an amount that would place Domina Law Group in as good a position as it would have enjoyed if the contract had been performed.

The damages you award for breach of contract must be foreseeable or have been reasonably foreseen at the time the parties entered into the contract.

In your consideration of the damages, you may consider the following:

1. The amount of necessary legal services billed to Douglas M. West and/or the Estate of Douglas M. West.

**FINAL INSTRUCTION NO. 20**

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room, and they will be destroyed.

**FINAL INSTRUCTION NO. 21**

The exhibits received into evidence in this case will be provided to you in the jury room during your deliberations. You will see that some of the exhibits have portions which are redacted or blacked out. Do not be concerned or speculate about the information which has been removed from these exhibits as the Court has prior to trial ruled that the redacted information is not relevant to the case.

## FINAL INSTRUCTION NO. 22

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

*First*, you will select a foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement, if you can do this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

Each of you must come to your own decision, but only after you have considered all the evidence, discussed the evidence fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges – judges of the facts. Your only job is to study the evidence and decide what is true.

*Third*, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Give the note to the court security officer and I will answer you as soon as I can, either in writing or here in court. While you are deliberating, do not tell anyone - including me - how many jurors are voting for any side.

*Fourth*, your verdict has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

**PAGE TWO OF FINAL INSTRUCTION NO. 22**

*Finally*, the verdict form is your written decision in this case. You will take this form to the jury room, and when you have all agreed on the verdicts, your foreperson will fill in the forms, sign and date them, and tell the court security officer that you are ready to return to the courtroom.

If more than one form was furnished, you will bring the unused forms in with you.

Dated October 1, 2018.

A handwritten signature in blue ink that reads "Helen C. Adams". The signature is written in a cursive style with a horizontal line underneath it.

HELEN C. ADAMS, Chief U.S. Magistrate Judge