

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

SHERI BARTLETT)	
(f/k/a CROWELL))	
)	
Plaintiff,)	
)	
v.)	3:08-CV-597-PPS
)	
NIBCO INC.,)	
)	
Defendant.)	

COURT'S FINAL JURY INSTRUCTIONS

Date: March 9, 2011

s/ Philip P. Simon
PHILIP P. SIMON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

COURT'S INSTRUCTION NO. 1

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 to influence you. You should not be influenced by any person's 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.

COURT'S INSTRUCTION NO. 2

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.

COURT'S INSTRUCTION NO. 3

In this case the defendant, NIBCO, 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.

COURT'S INSTRUCTION NO. 4

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.

COURT'S INSTRUCTION NO. 5

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, 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 and closing arguments to you are not evidence. The purpose of these 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.

COURT'S INSTRUCTION NO. 6

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

COURT'S INSTRUCTION NO. 7

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 "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.

COURT'S INSTRUCTION NO. 8

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of something. 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 it was 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.

COURT'S INSTRUCTION NO. 9

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.

COURT'S INSTRUCTION NO. 10

You may consider statements given by a party 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 that is inconsistent with his testimony here in court, you may consider the earlier statement 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, 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.

COURT'S INSTRUCTION NO. 11

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.

COURT'S INSTRUCTION NO. 12

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.

COURT'S INSTRUCTION NO. 13

The parties agree that certain exhibits accurately summarize the contents of documents, records, or books. You should consider these summaries just like all of the other evidence in the case.

COURT'S INSTRUCTION NO. 14

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.

COURT'S INSTRUCTION NO. 15

I have a duty to caution or warn an attorney who does something that I believe is not in keeping with the rules of evidence or procedure. You are not to draw any inference against the side whom I may caution or warn during the trial.

COURT'S INSTRUCTION NO. 16

Title VII of the Civil Rights Act of 1964, as amended, prohibits employers such as NIBCO from retaliating against employees who engage in protected conduct. You are instructed that conduct protected by Title VII includes the report and suggestion that Bartlett made to her supervisor, Bill Geers, on January 10, 2008.

COURT'S INSTRUCTION NO. 17

Bartlett claims that she was terminated by NIBCO because she reported alleged incidents of sexual harassment. To succeed on this claim, Bartlett must prove by a preponderance of the evidence that NIBCO terminated her because she reported alleged incidents of sexual harassment. To determine that Bartlett was terminated because she reported alleged incidents of sexual harassment, you must decide that NIBCO would not have fired Bartlett if she had not reported alleged incidents of sexual harassment but everything else was the same.

If you find that Bartlett has proved by a preponderance of the evidence each of the things required of her, then you must find for Bartlett. However, if you find that Bartlett did not prove by a preponderance of the evidence each of the things required of her, then you must find for NIBCO.

COURT'S INSTRUCTION NO. 18

In deciding Bartlett's claim, you should not concern yourselves with whether NIBCO's actions were wise, reasonable, or fair. Rather, your concern is only whether Bartlett has proven that NIBCO terminated her in retaliation for complaining about alleged incidents of sexual harassment.

COURT'S INSTRUCTION NO. 19

If you find in favor of Bartlett, the question of damages is a matter for the Court to decide, not the jury. So, regardless of your verdict, you will not consider the question of damages in this case.

COURT'S INSTRUCTION NO. 20

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.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and 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.

COURT'S INSTRUCTION NO. 21

I do not anticipate that you will need to communicate with me. 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.

COURT'S INSTRUCTION NO. 22

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, 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.