UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

DENISE HILL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**2:12-CV-165-PPS**
	)	
TRUCK ACCESSORIES GROUP, LLC,	)	
	)	
Defendant.	)	

JURY INSTRUCTIONS

Date: October 22, 2013

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

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.

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.

INSTRUCTION NO. 2

In this case one of the defendants 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.

INSTRUCTION NO. 3

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.

INSTRUCTION NO. 4

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

First, 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.

Second, 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.

Third, the lawyers' opening 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.

INSTRUCTION NO. 5

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

INSTRUCTION NO. 6

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.

INSTRUCTION NO. 7

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.

INSTRUCTION NO. 8

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.

INSTRUCTION NO. 9

You may consider statements given by parties or by witnesses under oath before trial as evidence of the truth of what she said in the earlier statements, as well as in deciding what weight to give her 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 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.

INSTRUCTION NO. 10

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

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.

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.

INSTRUCTION NO. 13

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.

INSTRUCTION NO. 14

If you decide for the defendant on the question of liability, then you should not consider the question of damages.

INSTRUCTION NO. 15

The parties have stipulated, or agreed, that certain facts are true. You must now treat these facts as having been proved for the purpose of this case:

1. TAG is a limited liability company doing business in Elkhart, Indiana.

2. TAG is an "employer" as that term is defined in the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

3. TAG had more than 500 employees in May 2011.

4. TAG manufactures truck caps, tonneau covers, and accessories for the automotive industry under the Leer and Century brands.

5. In May 2011, the company's TAG Midwest facilities were located on Ventura Drive and County Road 3 in Elkhart, Indiana.

6. TAG makes some truck caps and tonneau covers from fiberglass. Molten fiberglass is poured into a mold, and a "roller" uses a rolling brush similar to a paintbrush to smooth the fiberglass over the mold.

7. TAG relies on employees to inspect parts during the production process to ensure quality.

8. In May 2011, Sandy Briggs was employed with TAG as the Human Resources Manager at TAG Midwest.

9. In May 2011, Casey Becker was employed with TAG as Quality Manager at TAG Midwest.

10. In May 2011, Tom Hayward was employed with TAG as General Manager at TAG Midwest.

11. Denise Hill worked for TAG from September 6, 2001, until July 11, 2009.

12. Ms. Hill injured her wrist at work on or about January 9, 2006.

13. Ms. Hill injured her elbow at work on or about May 4, 2009.

14. TAG closed the 20th Century Fiberglass facility where Ms. Hill worked in July 2009. Approximately 26 employees, including Ms. Hill, were placed on lay off as part of this plant closing.

15. On May 25, 2011, Ms. Hill spoke to Sandy Briggs in Ms. Briggs' office at TAG Midwest on Ventura Drive. No one else participated in that conversation.

16. On June 1, 2011, Ms. Hill spoke with Ms. Briggs by telephone. No one else participated in that conversation.

INSTRUCTION NO. 16

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 cautioned or warned during the trial.

INSTRUCTION NO. 17

Plaintiff has brought this lawsuit under a federal law called the Americans with Disabilities Act, which is often referred to by its initials, "ADA." Under the ADA, it is illegal for an employer to discriminate against an individual because it regards the individual as having a disability, even if she doesn't.

In this case, Plaintiff claims that Defendant discriminated against her by denying her a job because it regarded her as having a disability. Defendant denies that it regarded Plaintiff as disabled.

As you listen to these instructions, please keep in mind that many of the terms I will use have a special meaning under the law. So please remember to consider the specific definitions I give you, rather than using your own opinion as to what these terms mean.

INSTRUCTION NO. 18

To succeed in this case, Plaintiff must prove four things by a preponderance of the evidence:

1. Defendant regarded Plaintiff as having a disability;

2. Plaintiff was "qualified" to perform the job;

3. Defendant refused to place Plaintiff in the job;

4. Defendant would not have so refused if Defendant had not regarded Plaintiff as disabled, but everything else had been the same.

If you find that Plaintiff has proved each of these things by a preponderance of the evidence, you should turn to the issue of Plaintiff's damages. If you find that Plaintiff has failed to prove any of these things by a preponderance of the evidence, your verdict should be for Defendant.

INSTRUCTION NO. 19

Under the ADA, a person is "regarded as" having a disability if:

1. The employer believes that the person has a physical or mental impairment that substantially limits her ability to work a broad range of jobs; or

2. The employer believes that an actual impairment substantially limits her ability to work a broad range of jobs when it does not, because of the attitude that others have about the impairment; or

3. The person does not have any impairment, but the employer treats him as having an impairment that substantially limits his ability to work a broad range of jobs.

INSTRUCTION NO. 20

Under the ADA, Plaintiff was "qualified" if she had the skill, experience, education, and other requirements for the job and could do the job's essential functions. You should only consider Plaintiff's abilities at the time when she applied for employment.

Not all job functions are "essential." Essential functions are a job's fundamental duties. In deciding whether a function is essential, you may consider the reasons the job exists, the number of employees Defendant has to do that kind of work, the degree of specialization the job requires, Defendant's judgment about what is required, the consequences of not requiring an employee to satisfy that function, and the work experience of others who held that position.

INSTRUCTION NO. 21

In deciding Plaintiff's claim, you should not concern yourselves with whether Defendant's actions were wise, reasonable, or fair. Rather, your concern is only whether Plaintiff has proved that Defendant discriminated against Plaintiff by not employing her because Defendant regarded Plaintiff as disabled.

INSTRUCTION NO. 22

You have heard evidence that, in 2009, the Defendant decided not to authorize the Plaintiff to receive treatment from a physician different from the provider whom the Defendant selected. In Indiana, the employer, not the employee, selects a physician to provide treatment for worker's compensation claims. Therefore, you should not infer from this evidence that the Defendant treated the Plaintiff improperly when it made this decision.

INSTRUCTION NO. 23

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

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

INSTRUCTION NO. 24

You may award compensatory damages only for injuries that Plaintiff has proved by a preponderance of the evidence were caused by Defendant'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 and emotional pain and suffering that Plaintiff has experienced and is reasonably certain to experience in the future. No evidence of the dollar value of mental and 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 Plaintiff for the injury she has sustained.

INSTRUCTION NO. 25

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

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

Plaintiff must prove by a preponderance of the evidence that Defendant's managerial employee Sandra Briggs acted within the scope of her employment and in reckless disregard of Plaintiff's right not to be discriminated against. You should not, however, award Plaintiff punitive damages if Defendant proves that it made a good faith effort to implement an antidiscrimination 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 Defendant's conduct;

- the impact of Defendant's conduct on Plaintiff;
- the relationship between Plaintiff and Defendant;
- the likelihood that Defendant would repeat the conduct if an award of punitive damages is not made;
- the relationship of any award of punitive damages to the amount of actual harm the Plaintiff suffered.

INSTRUCTION NO. 26

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.

INSTRUCTION NO. 27

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.

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

INSTRUCTION NO. 28

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.