

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

VICTOR BODDIE,)
)
 Plaintiff,)
)
 v.)
)
 THE CHEMOURS COMPANY, a/k/a THE)
 CHEMOURS COMPANY FC, LLC,)
)
 Defendant.)

Case No. 2:19-cv-02423-JPM-atc

JURY INSTRUCTIONS

I. INTRODUCTION

Members of the jury, we have now come to the point in the case when it is my duty to instruct you on the rules of law that you must follow and apply in deciding this case.

As jurors it is your exclusive duty to decide all questions of fact submitted to you and for that purpose to determine the effect and value of the evidence.

You must not be influenced by sympathy, bias, prejudice or passion for one side or the other.

You must follow the law as I explain it to you whether you agree with it or not. You are not to single out any particular part of the instructions and ignore the rest, but you are to consider all the instructions as a whole and regard each in the light of all the others.

All of the instructions are equally important. The order in which these instructions are given has no significance. You must follow all of the instructions and not single out some and ignore others.

II. GENERAL INSTRUCTIONS

A. Burden of Proof and Consideration of the Evidence

I will now instruct you with regard to where the law places the burden of making out and supporting the facts necessary to prove the theories in the case.

When a party denies the material allegations of the other party's claims, the law places upon the party bringing a claim the burden of supporting and making out each element of each claim by the greater weight or preponderance of the evidence. Plaintiff, Victor Boddie, has the burden of proof in this case. The Defendant, Chemours, likewise has a duty to prove or establish every essential element of its defenses of failure to mitigate damages and after-acquired evidence by a preponderance of the evidence.

The preponderance of the evidence means that amount of factual information presented to you in this trial which is sufficient to cause you to believe that an allegation is probably true. In order to preponderate, the evidence must have the greater convincing effect in the formation of your belief. If the evidence on a particular issue appears to be equally balanced, the party having the burden of proving that issue must fail.

Those of you who have sat on criminal cases will have heard of proof beyond a reasonable doubt. That is a stricter standard, i.e., it requires more proof than a preponderance of the evidence. The reasonable doubt standard does not apply to a civil case and you should therefore put it out of your mind.

Unless otherwise instructed, you must consider all the evidence pertaining to every issue, regardless of which party presented it.

B. Corporation Not to be Prejudiced

In this case, the defendant, Chemours, is a corporation. The fact that a party is a corporation must not influence you in your deliberations or in your verdict.

You may not discriminate between corporations and natural individuals. Each is a person in the eyes of the law, and each is entitled to the same fair and impartial consideration and to justice by the same legal standards.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. A corporation is entitled to the same fair trial at your hands as a private individual. All persons, including corporations, stand equal before the law, and are to be dealt with as equals in a court of justice.

C. Corporations Act Through Designated Employees

While the defendant is a corporation, that does not mean that only the actions of one body can be considered by you in determining liability in this case. A corporation acts not only through the policies and decisions that it makes, but also through its designated supervisory employees, such as its supervisors, managers, officers, and others designated by the corporation to act on its behalf.

Pay attention as you consider the evidence in the case. Remember, at the end of the case you will have to determine whether or not individual employees were authorized to act on behalf of Chemours.

D. Credibility and Weighing of Evidence

You, the members of the jury, are judges of the facts concerning the controversy involved in this lawsuit. In order for you to determine what the true facts are, you are called upon to weigh the testimony of every witness who appeared before you and give the testimony the weight, faith, credit and value to which you think it is entitled.

You should consider the manner and demeanor of each witness while on the stand.

You must consider whether the witness impressed you as one who was telling the truth or one who was telling a falsehood, and whether or not the witness was a frank witness. You should consider the reasonableness or unreasonableness of the testimony of the witness; the opportunity or lack of opportunity of the witness to know the facts about which he or she testified; the intelligence or lack of intelligence of the witness; the interest of the witness in the result of the lawsuit, if any; the relationship of the witness to any of the parties to the lawsuit, if any; and whether the witness testified inconsistently while on the witness stand, or if the witness said or did something or failed to say or do something at any other time that is inconsistent with what the witness said while testifying.

These are the rules that should guide you, along with your common judgment, your common experience and your common observations gained by you in your various walks of life, in weighing the testimony of the witnesses who have appeared before you in this case.

If there is a conflict between the testimony of different witnesses, it is your duty to reconcile that conflict if you can, because the law presumes that every witness has attempted to and has testified to the truth. But if there is a conflict in the testimony of the witnesses that you are not able to reconcile in accordance with these instructions, then you must determine which of the

witnesses you believe have testified to the truth and which ones you believe have testified to a falsehood.

Immaterial discrepancies do not affect a witness's testimony, but material discrepancies do. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

The preponderance of the evidence in a case is not determined by the number of witnesses testifying to a particular fact or a particular set of facts. Rather, it depends on the weight, credit and value of the total evidence on either side of the issue, and of this you jurors are the exclusive judges.

If in your deliberations you come to a point where the evidence is evenly balanced and you are unable to determine which way the scales should turn on a particular issue, then you must find against the party upon whom the burden of proof has been cast in accordance with these instructions.

Remember, you are the sole and exclusive judges of the credibility or believability of the witnesses who testified in this case.

Ultimately, you must decide which witnesses you believe and how important you think their testimony was. You are not required to accept or reject everything a witness says. You are free to believe all, none, or part of any person's testimony.

E. Impeachment – Inconsistent Statements or Conduct

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

If you believe that any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness's other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves; you may, of course, accept any part you decide is true. This is all for you, the jury, to decide.

An act or omission is done "knowingly" if committed voluntarily and intentionally, and not because of mistake or accident, or some other innocent reason.

F. Direct and Circumstantial Evidence

There are two kinds of evidence: direct and circumstantial. Direct evidence is testimony by a witness about what a witness personally saw, heard or did. Circumstantial evidence is indirect evidence—that is, proof of one or more facts from which one can find another fact.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

G. Evidence

You are to decide this case only from the evidence that was received—that is, evidence that was presented for your consideration during the trial. The evidence consists of:

1. The sworn testimony of the witnesses who have testified;
2. The exhibits that were received and marked as evidence;
3. Any facts to which the lawyers for both sides have agreed or stipulated; and
4. Any other matters that I have instructed you to consider as evidence.

H. “Inferences” Defined

Although you are to consider only the evidence in this case, you are not limited to the statements of the witnesses. In other words, you are not limited to what you saw and heard as the witnesses testified. You may draw from the facts that you find have been proved such reasonable inferences as seem justified in light of your experience.

Inferences are deductions or conclusions that reason and common sense lead you to make from facts established by the evidence in the case.

I. Statements and Arguments of Counsel

You must not consider as evidence any statements of counsel made during the trial.

If, however, counsel for the parties have stipulated to any fact, or any fact has been admitted by counsel, you will regard that fact as being conclusively established.

As to any questions to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection, and you must assume that the answer would be of no value to you in your deliberations.

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken out by the Court. Such matter is to be treated as though you had never known it.

You must never speculate to be true any insinuation suggested by a question asked of a witness. A question is not evidence. It may be considered only as it supplies meaning to the answer.

J. Totality of the Evidence

You should consider all of the evidence admitted in the case. Testimony and documents which the Court allowed into evidence over a hearsay objection may be considered by you as evidence, on the same basis as all other evidence, for the purpose for which it was admitted. For example, matters and things that a decision maker is told may be considered for the purpose of explaining the basis upon which that person acted or made a decision. This, of course, is all for you, the jury, to decide.

K. Juror Notes

If you took notes, please remember that your notes are not evidence. You should keep your notes to yourself. They may only be used to help refresh your personal recollection of the evidence in this case. It is the evidence itself, and not your notes, that you should discuss with the other jurors.

If you cannot recall a particular piece of evidence, you should not be overly influenced by the fact that someone else on the jury appears to have a note regarding that evidence.

Remember, it is your recollection and the collective recollection of all of you upon which you should rely in deciding the facts in the case.

L. Comments by the Court

During the course of this trial, I occasionally asked questions of a witness in order to bring out facts not then fully covered in the testimony. Please do not assume that I hold any opinion on the matters to which my questions may have related. Remember that you, as jurors, are at liberty to disregard all comments of the Court in arriving at your own findings as to the facts.

On the other hand, you are required to follow the Court's instructions on the law, whether you agree with these instructions or not.

M. Limited Admission of Evidence

During the course of this trial certain evidence may be admitted for a limited purpose only. You must not consider such evidence for any other purpose.

For example, evidence is admitted for the limited purpose of showing a witness's state of mind, or that the witness had notice of a particular issue. Evidence of a witness's state of mind is relevant only to show what the witness believed. Such evidence cannot be considered for the truth or accuracy of the belief. Likewise, evidence admitted only to show notice cannot be considered for the truth or accuracy of the matter it concerns.

N. Deposition Testimony

Certain testimony has been presented by deposition. A deposition is testimony taken under oath before the trial. You are to consider that testimony as if it had been given in Court.

III. STATEMENT OF THE CASE AND STIPULATED FACTS

A. Statement of the Case

Before I instruct you on the specific provisions and factors you are to consider under the laws alleged to have been violated in this case, I want to frame the issues that you will be called upon to decide. Plaintiff Victor Boddie alleges that his termination from Chemours was the result of discrimination based on race and age in violation of Title VII, the ADEA, and 42 U.S.C. § 1981. Mr. Boddie asserts that the reasons for his termination asserted by Chemours are a pretext for its real reason of discrimination. Mr. Boddie seeks compensatory damages due to his loss of employment and mental suffering.

Defendant Chemours contends that Plaintiff is not entitled to any damages, as it did not discriminate against him based on race or age. Chemours contends that it terminated plaintiff for cause as a result of his repeated failures to observe and follow safety rules, policies, and procedures while at work.

B. Stipulated Facts

Before the trial of this case, the parties agreed to the truth of certain facts. As a result of this agreement, Mr. Boddie and Chemours entered into certain stipulations in which they agreed that the stipulated facts could be taken as true without the parties presenting further proof on the matter. This procedure is often followed to save time in establishing facts that are undisputed.

Facts stipulated to by the parties in this case include the following:

1. In 2018, Plaintiff's gross income from Chemours Co. was \$86,814.
2. Plaintiff's 2017 tax return reflects a taxable income of \$83,776.80.
3. Plaintiff's yearly wages consistently fell between \$83,000 and \$94,000 in previous years.
4. At the time of Plaintiff's termination, his hourly rate was \$37.92 per hour.
5. Neither Sheila Diemer nor Brian Fullingim had been employed at this plant for longer than three years.
6. Plaintiff is a member of Bakery, Confectionary, Tobacco Workers & Grain Millers Local 352G.
7. Plaintiff is not currently working at a new job. He has no part-time employment and is not actively searching for new employment.
8. Plaintiff does not claim any physical injury damage, and no physician was called to testify in this case.
9. Mr. Boddie was employed by DuPont and subsequently Chemours for 39 years, from February of 1979 to February 4, 2019.
10. Prior to the termination of his employment, Plaintiff had both an Informal Contact and a Formal Contact on his disciplinary record as a result of his violations of Chemours Fatigue Management Policy but had not received a Formal Reprimand.

11. The only other maintenance mechanics working in the powerhouse area were Brian Whitesides, Chris Bryan, and Brian Deweese, all of whom are white and younger than Mr. Boddie.
12. Chemours has employed more than 500 employees at all times from January 2017 to the present.

IV. GENERAL INSTRUCTIONS ON THE APPLICABLE LAW

A. Legal Theories of the Case

Turning now to the legal theories in the case, it is my duty to tell you what the law is. If a lawyer or party has told you that the law is different from what I tell you it is, you must, of course, take the law as I give it to you. That is my duty. But it is your duty, and your duty alone, to determine what the facts are and after you have determined what the facts are, to apply the law to those facts, free from any bias, prejudice or sympathy, either one way or the other.

B. Nature of the Action

In this case, Mr. Boddie has brought a case for workplace discrimination against Chemours.

He alleges three specific claims.

1. Discrimination on the basis of age under the Age Discrimination in Employment Act.
2. Discrimination on the basis of race under Title VII of the Civil Rights Act.
3. Discrimination on the basis of race under the Federal Civil Rights Act, 42 U.S.C. § 1981.

You must consider each claim separately and decide each claim without regard to your determination as to any other claim.

I will instruct you on the applicable law for each of these claims.

C. Age Discrimination in Employment Act (ADEA) - Statute

As I said earlier, Mr. Boddie brings a claim under the Age Discrimination in Employment Act, or the ADEA. The ADEA provides in pertinent part that it shall be unlawful for an employer to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment because of such individual's age.

D. Elements of an ADEA Claim

The Age Discrimination in Employment Act forbids discrimination against individuals who are at least 40 years old. In other words, the Act makes it unlawful for an employer to discriminate against an individual age 40 or older because of his or her age. In order to recover, a plaintiff who alleges discrimination based on age must prove by a preponderance of the evidence that:

1. The plaintiff was at least forty years of age and was qualified to perform the required duties;
2. The plaintiff was discharged;
3. The defendant discharged the plaintiff because of his age, that is, the defendant would not have discharged the plaintiff but for his age.

E. Age Discrimination Requirements – But-for Causation

The plaintiff has introduced evidence that he claims demonstrates that an illegitimate factor—age—was a motivating factor in his termination. If you believe the plaintiff’s evidence and are persuaded by a preponderance of the evidence that, except for the consideration of age, the defendant would not have made the same employment decision, then you must find for the plaintiff.

The plaintiff need not establish that age was the sole factor motivating the defendant. Age may be one of a number of factors contributing to the defendant’s actions. The plaintiff must establish by a preponderance of the evidence that age was a determinative factor in the action taken by the defendant. The plaintiff demonstrates that age was a determinative factor if he shows that “but for” his age, the adverse action would not have happened—that is, but for his age, he would not have been discharged.

F. Willful Violation of the ADEA

You are instructed that if you find that the plaintiff was discriminated against by defendant on the basis of age, then you must decide whether defendant's conduct was willful for the purposes of liquidated damages.

A violation is willful if the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the Age Discrimination in Employment Act. A violation is willful if it is done voluntarily, deliberately, and intentionally, and not by accident, inadvertence, or ordinary negligence.

If the defendant acted with actual knowledge that its actions would violate the ADEA, or if the defendant was reckless in not knowing whether its actions would violate the ADEA, or if the defendant acted in reckless disregard of whether its actions were covered by the ADEA, then you must find that the defendant acted willfully.

You are instructed that an action taken by an employer with mere knowledge of potential applicability of the ADEA is insufficient to establish that the employer's actions were willful. Similarly, an action by the employer is not willful if the defendant acts reasonably and in good faith.

G. Title VII – the Statute

The language of Title VII that is applicable to Plaintiff's discrimination claims provides:

It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual's race.

42 U.S.C. § 2000e-2(a)(1).

H. Title VII Policy

The policy of Title VII is to provide a work environment free from discrimination based on sex, race, color, national origin, or religion. Under Title VII, it is illegal to discriminate against an employee because of the employee's race.

An employee is not entitled to a friendly, congenial, or pleasant workplace. Title VII does not create a general civility code. In other words, Title VII does not create a federal remedy for all offensive language and conduct in the workplace, nor does it require refinement or sophistication, or a happy workplace. Title VII only guarantees a workplace free of unlawful discrimination.

I. Section 1981 – the Statute

The third statute under which the plaintiff seeks relief is Section 1981. Section 1981 prohibits racial discrimination as defined in this case. Therefore, in order to find the defendant liable for discrimination under Section 1981, you must determine whether the discrimination, if any, was based on race.

J. Title VII Claim Elements

Title VII forbids discrimination against individuals who are within a protected class. Race is a protected class. In other words, Title VII makes it unlawful for an employer to discriminate against an individual because of his race. A plaintiff who alleges discrimination based upon race must prove by a preponderance of the evidence that:

1. The plaintiff was within a protected class.
2. The plaintiff was discharged or suffered some other adverse employment action.
3. The position was filled by a person outside the protected class or the plaintiff was treated differently than other employees who were outside of the protected class; and,
4. Race was a motivating factor in the defendant's decision to discharge the plaintiff.

K. Motivating Factor

Under Title VII, in showing that Plaintiff's race was a motivating factor for Defendant's action, Plaintiff is not required to prove that his race was the sole motivation or even the primary motivation for Defendant's decision. Plaintiff need only prove that his race played a motivating part in Defendant's decision even though other factors may also have motivated Defendant. As used in this instruction, Plaintiff's race was a motivating factor if his race played a part in Defendant's decision to terminate Plaintiff.

In determining whether race was a motivating factor in the Defendant's decision to terminate his employment, you may consider any statements made or act done or admitted by Defendant, and all other facts and circumstances in evidence indicating state of mind. An improper motive, if it exists, is seldom directly admitted and may or may not be inferred from the existence of other facts.

L. Section 1981 Claim Elements

Section 1981 provides that it is an unlawful employment practice for an employer to discriminate in the terms and conditions of employment on the basis of an individual's race. Terms and conditions of employment include compensation and other circumstances of employment.

To succeed on his claim, Mr. Boddie must prove by a preponderance of the evidence each of the following two elements:

(1) First Element – Adverse Employment Action. Mr. Boddie asserts that Defendant took an adverse employment action against him. For purposes of this first element, Mr. Boddie asserts that he was terminated by Chemours.

(2) Second Element – A Protected Characteristic was the “But-For” Cause of the Adverse Employment Action. Mr. Boddie's race must be the “but-for” cause of the adverse employment action of Chemours. Stated differently, Chemours would have acted differently if it were not for Mr. Boddie's race. The plaintiff need not establish that race was the sole factor motivating the defendant. Race may be one of a number of factors contributing to the defendant's actions. The plaintiff must establish by a preponderance of the evidence that race was a determinative factor in the action taken by the defendant. The plaintiff demonstrates that race was a determinative factor if he shows that “but for” his race, the adverse action would not have happened—that is, but for his race, he would not have been discharged.

Summary: If Plaintiff has proven both of the elements required by a preponderance of the evidence, then you must return a verdict for the Plaintiff. Conversely, if the Plaintiff has not proven either of the elements required by a preponderance of the evidence, then you must return a verdict for the Defendant.

M. Supplemental Instruction

Plaintiff has conceded that he was not replaced and instead asserts that he was treated differently than similarly situated employees outside his protected class. Because Plaintiff does not assert that he was replaced during the 2 years following his termination, subsequent hiring decisions by Chemours are not a matter for the jury to consider.

N. Adverse Employment Action

The parties do not dispute that the first element—an adverse employment action—has been met as to Mr. Boddie’s claim: namely, that Chemours terminated Mr. Boddie. The parties do not dispute that Mr. Boddie’s termination was an adverse employment action, satisfying element one of Section 1981 and element two of Title VII.

O. Pretext

If the defendant has offered evidence tending to show a nondiscriminatory reason for the challenged action, you should consider whether the defendant's articulated reason for its action is not the true reason why the defendant took adverse action against the plaintiff and whether the true reason for the adverse action was age and/or race discrimination.

When you consider the plaintiff's evidence that the reason advanced by the defendant is a pretext, keep in mind that the relevant question is not whether the defendant's reason showed poor or erroneous judgment. The defendant would be entitled to make its decision for a good reason, a bad reason, or for no reason at all, so long as the decision was not motivated by unlawful discrimination. However, you may consider whether the defendant's reason is merely a cover-up for discrimination. In doing this, you may consider whether the asserted reason comports with the defendant's own policies and rules and whether such policies and rules have been applied uniformly. You also should carefully evaluate any subjective reasons that the defendant has asserted for taking the action against the plaintiff that it did in deciding whether the plaintiff has met his burden of proof.

It is the plaintiff's burden to persuade you, by a preponderance of the evidence, that the defendant took the adverse action against the plaintiff because of his age and/or race. If you do not believe the defendant's explanation for this action, then you may infer, but need not infer, that the real reason was that the defendant intentionally discriminated against the plaintiff because of his age and/or race.

Plaintiff may demonstrate that the reasons given by the defendant are unworthy of belief through evidence showing:

1. The asserted reasons had no basis in fact;
2. The asserted reasons did not actually motivate Plaintiff's discharge; or
3. The asserted reasons were insufficient to motivate Plaintiff's discharge.

P. Intent and Pretext

Proof of intent is important to certain claims in this case. Intent refers to a defendant's state of mind when a defendant did what it did. It is not the role of the jury to simply second guess employment decisions. An employer may generally act against an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all—but not for a discriminatory reason. Chemours contends that there were legitimate, nondiscriminatory reasons for their conduct and actions toward Mr. Boddie. Mr. Boddie contends that these explanations are pretextual; that is, that they are unworthy of belief and were not the real reason for Chemours's conduct. The law considers actions to be intentional if they are done voluntarily and deliberately. Discriminatory intent may be proven either by direct evidence, such as statements made by a person whose intent is at issue, or by circumstantial evidence from which you can infer or deduce a person's intent. Direct proof concerning state of mind is often not available and a plaintiff is not required to produce it.

Mr. Boddie must show that Chemours intentionally discriminated against him. Mr. Boddie is not required to produce direct evidence of intentional discrimination. Intentional discrimination may be inferred from the existence of other facts or the cumulative weight of circumstantial evidence. Because employers rarely leave a paper trail – or “smoking gun” – attesting to a discriminatory intent, plaintiffs, such as Mr. Boddie, must often build their cases from indirect evidence and pieces of circumstantial evidence which undercut the credibility of the various testimony offered by the employer. Therefore, you may consider circumstantial evidence such as the testimony and evidence offered by other employees, evidence relating to company-wide practices that may reveal patterns of discrimination against a group of employees, and other indirect evidence of discriminatory motive. The process of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a deduction or conclusion

which you, the jury, are permitted to draw – but not required to draw – from the facts which have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense. State of mind can be inferred from words, action, and conduct. State of mind can also be established by surrounding facts and circumstances at the time an action was taken, and the reasonable inferences to be drawn from those facts and circumstances.

Thus, in making a determination as to whether there was intentional discrimination in this case, you may consider any statement made, act done, and any omission by a person or entity whose intent is at issue. You may infer that a person or entity intends the natural and probable consequences of their actions. You may also consider all other facts and circumstances that you believe provide insight into a person's or entity's state of mind.

If you determine that Mr. Boddie has shown by a preponderance of the evidence that Chemours's stated reasons for taking actions against him were not the real reason or reasons, you may find that Chemours's actions were in fact motivated by discrimination despite the stated legitimate reasons. If you find that Chemours, through its authorized management employees, has given an implausible or unconvincing explanation for conduct, you may consider that fact as itself circumstantial evidence of discriminatory intent. The burden, however, always remains on Mr. Boddie to prove by a preponderance of the evidence that Chemours acted with discriminatory intent.

Q. At-Will Employment

When considering Plaintiff's claims, you should keep in mind that absent an employment contract, employment is "at-will." The employment contract would be between the individual employee and Chemours and is not the same as the Collective Bargaining Agreement. There is not a dispute that Mr. Boddie was an at-will employee. That is to say that the employer may terminate an employee at any time, with or without cause, so long as the reason for the termination is not an illegally discriminatory reason.

R. Business Judgment Rule

The law allows an employer, such as Chemours, broad discretion in the implementation of its legitimate business objectives, including the supervision and management of its employees and their work assignments. An employer is legally entitled to exercise its own business judgment when making a business decision. Neither you nor I can second guess that business decision. In other words, Plaintiff may not prevail merely because you do not agree with Defendant's decisions or think the decisions were unfair, unjust or a mistake. The fact that an employer's decision may seem stupid, incorrect, unfair, unwise—or even that a business judgment was based on personal animosity—is irrelevant. The question is not whether Defendant's methods were sound, or their judgments the best ones or the right ones or the fair ones, or whether you would have done the same thing if you were in the employer's shoes at the time. Instead, the only issue before you is whether the Defendant was motivated by Plaintiff's race and/or age when making the decision regarding Plaintiff's employment; not whether Defendant made the right decision.

S. Malice or Reckless Indifference

Plaintiff claims the acts of Defendant were done with malice or reckless indifference to Plaintiff's federally protected rights and that as a result there should be an award of what are called "punitive" damages. An award of punitive damages against Chemours is permissible only if you find by a preponderance of the evidence that a management official of Chemours personally acted with malice or reckless indifference to Plaintiff's federally protected rights. An action is with malice if a person knows it violates the federal law prohibiting discrimination and does it anyway. An action is with reckless indifference if taken with knowledge that it may violate the law.

But even if you make a finding that there has been an act of discrimination with malice or reckless disregard of Plaintiff's federal rights, you cannot award damages if Chemours proves by a preponderance of the evidence that it made a good-faith attempt to comply with the law, by adopting policies and procedures designed to prevent unlawful discrimination such as that suffered by Plaintiff.

If you make a finding that there has been an act of discrimination with malice or reckless disregard of Plaintiff's federally protected rights and that Chemours did not make a good-faith attempt to comply with the law, then further evidence and instructions regarding punitive damages will be given after the Jury Verdict form is signed and returned to the Court.

V. DAMAGES

T. General Damages Instructions

I will now instruct you on the law as it relates to damages. If the Plaintiff has proven by a preponderance of the evidence that defendant is liable, then you must determine the damages if any to which he is entitled. You must do this only under the instructions I will give you as to how to calculate damages. You should not infer that Mr. Boddie is entitled to recover damages merely because I am instructing you on the elements of damages. It is exclusively your function to decide upon liability, and I am instructing you on damages only so that you will have guidance should you decide that Plaintiff is entitled to recovery.

Mr. Boddie has the burden of proving the nature, extent, duration and consequences of damages sought. This means that Mr. Boddie must establish that he actually incurred a loss of earnings. He must also establish the amount of his individual losses with reasonable certainty; however, it is not necessary that he prove the amount of damages with mathematical precision. If you should find that Mr. Boddie is entitled to damages, you may award Mr. Boddie only an amount that will reasonably compensate him for the damage you find he has sustained as a direct cause of Defendant's actions or inactions.

U. After Acquired Evidence

In this case there is another factor you will have to consider regarding damages if you find that age or race was a motivating factor in the termination of Plaintiff's employment. The Plaintiff alleges that he was "splashed with an unknown substance" to explain why he went to take a shower earlier than allowed. The Defendant contends that Plaintiff violated safety rules by not reporting that he was exposed to an unknown substance before he went to the shower. Defendant contends that had it known of this rationale by Plaintiff at the time it happened, Plaintiff would have been in violation of a major safety rule because of his failure to report the incident, and Chemours would have made the same decision to discharge the Plaintiff for violating that safety rule. If Chemours proves by a preponderance of the evidence that it would have made the same decision and would have discharged Mr. Boddie because of his violation of Chemours safety policies and procedures, you should limit any award of back pay to the date Chemours would have made the decision to discharge the Plaintiff as a result of this violation of Chemours safety rules and policies.

V. Mitigation

The plaintiff has a duty to mitigate his damages – that is, to make reasonable efforts under the circumstances to reduce his damages. If the defendant proves that the plaintiff unjustifiably failed to take new job of like kind, status, and pay which was available to him, or failed to make reasonable efforts to find a new job, you should subtract from the plaintiff's damages any amount he could have earned in a new job.

The defendant has the burden of establishing that the plaintiff failed to use reasonable diligence in mitigating damages. The defendant must prove both the availability of suitable and comparable substitute employment and the lack of reasonable diligence on the part of the plaintiff.

W. Back Pay

If you determine that Mr. Boddie was terminated as a result of unlawful discrimination, he may recover lost wages and benefits. The amount of wages and benefits due is determined by calculating the amount that he would have earned from the date of adverse action to the date you, the jury, return a verdict, unless the plaintiff would have been terminated or discharged for nondiscriminatory reasons prior to trial. In the latter circumstances, lost wages and benefits are calculated from the date of the adverse action to the date such discharge would have occurred.

X. Front Pay

You may determine separately a monetary amount equal to the present value of any future wages and benefits that Mr. Boddie would reasonably have earned from Chemours had Mr. Boddie not been terminated for the period from the date of your verdict through a reasonable period of time in the future, that is, the date of his expected cessation of employment with the defendant (that is, his anticipated retirement). From this figure you must subtract the amount of earnings and benefits that he would not have otherwise received from other employment during that time. Mr. Boddie has the burden of proving these damages by a preponderance of the evidence.

If you find that Mr. Boddie is entitled to recovery of future earnings from Chemours, then you must reduce any award by the amount of the expenses that Mr. Boddie would have incurred in making those earnings. You must also reduce any award to its present value by considering the interest that plaintiff could earn on the amount of the award if he made a relatively risk-free investment. You must make this reduction because an award of an amount representing future loss of earnings is more valuable to plaintiff if he receives it today than if it were received at the time in the future when it would have been earned. It is more valuable because Mr. Boddie can earn interest on it for the period of time between the date of the award and the date he would have earned the money. Therefore, you should decrease the amount of any award for loss of future earnings by the amount of interest that plaintiff can earn on that amount in the future. This is all for you, the jury, to determine.

Y. Emotional Harm

If you find that Defendant discriminated against Plaintiff based on his race, you must determine an amount that is fair compensation for Plaintiff's emotional pain and suffering that he has proved he has suffered as a result of Defendant's conduct. You may award compensatory damages only for injuries Plaintiff proves were caused by Defendant's conduct.

No evidence of the monetary value of such intangible things as pain and suffering has been, or need be, introduced into evidence.

Z. Speculative Damages

You may not speculate, guess, or infer damages. Damages must be reasonable and based upon the evidence before you. You must determine the appropriate amount of damages, if any, based upon the evidence presented and not because you feel sympathy for Plaintiff.

AA. Nominal Damages

If you return a verdict for Plaintiff on a discrimination claim but find that he failed to prove that he suffered any actual damages, then you must return an award of nominal damages not to exceed the sum of one dollar. Nominal damages must be awarded when a plaintiff has been deprived of a right but has suffered no actual damages as a result of that deprivation. You may not award both nominal and compensatory damages.

VI. VERDICT

Finally, members of the jury, we come to the point where we will discuss the form of your verdict and the process of your deliberations. You will be taking with you to the jury room a verdict form that will reflect your findings. The verdict form reads as follows:

[Read Verdict Form]

You will be selecting a presiding juror after you retire to the jury room. That person will preside over your deliberations and be your spokesperson here in court. When you have completed your deliberations, your presiding juror will fill in and sign the verdict form.

Each of you should deliberate and vote on each issue to be decided.

Before you return your verdict, however, each of you must agree on the answer to each question so that each of you will be able to state truthfully that the verdict is yours.

The verdict you return to the Court must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to each answer. Your verdict must be unanimous.

It is your duty to consult with one another and to reach an agreement if you can do so without violence to individual judgment. 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 to change your opinion if you are convinced that it is not correct. 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.

We will be sending with you to the jury room all of the exhibits in the case. You may not have seen all of these previously and they will be there for your review and consideration. You

may take a break before you begin deliberating, but do not begin to deliberate and do not discuss the case at any time unless all of you are present together in the jury room. Some of you have taken notes. I remind you that these are for your own individual use only and are to be used by you only to refresh your recollection about the case. They are not to be shown to others or otherwise used as a basis for your discussion about the case.

If a question arises during deliberations and you need further instructions, please write your question on a sheet of paper, knock on the door of the jury room, and give the question to the court security officer.

I will review your question, and after consulting with all counsel in the case, will either respond to your question in writing or have you return to the courtroom for further oral instructions. Please understand that I may only answer questions about the law, and I cannot answer questions about the evidence. I caution you, however, that with regard to any message or question you might send me, you should not tell me your numerical division at the time.

I remind you that you are to decide this case based only on the evidence you have heard in court and on the law I have given you. You are prohibited from considering any other information and you are not to consult any outside sources for information. You must not communicate with or provide any information, photographs, or video to anyone by any means about this case or your deliberations. You may not use any electronic device or media, such as a telephone, cell phone, smart phone or computer; the Internet, any text or instant messaging service; or any chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate with anyone or to conduct any research about this case.

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