

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**ALEXANDER ACOSTA, Secretary of Labor,
United States Department of Labor,**

Plaintiff,

v.

**1:12-CV-1278
(FJS/TWD)**

**CHAMPAGNE DEMOLITION, LLC, a
limited liability company and JOSEPH
A. CHAMPAGNE, individually,**

Defendants.

JURY INSTRUCTIONS

I. INTRODUCTION

Now that you have heard all the evidence and the arguments of counsel, it is my duty to instruct you on the law applicable to this case.

Your duty as jurors is to first determine what, if any, compensatory damages should be awarded to Mr. Miles.

II. BURDEN OF PROOF

In this case, Plaintiff has the burden of proof. In other words, the law requires that, in order to prevail on his claims for damages against Defendants, Plaintiff must establish that Mr. Miles is entitled to such damages by a fair

preponderance of the credible evidence. The credible evidence means the testimony or exhibits that you find worthy to be believed. A preponderance means the greater part of it. It does not mean the greater number of witnesses or the greater length of time taken by either side. The phrase refers to the quality of the evidence, its weight, and the effect that it has on your minds. Thus, for Plaintiff to prevail on his claim that Mr. Miles is entitled to an award of compensatory damages against Defendants, the evidence that supports an award of such damages must appeal to you as more nearly representing what took place than the evidence opposed to an award of such damages. If it does not, or if it weighs so evenly that you are unable to say that there is a preponderance on either side, you must find that Mr. Miles is not entitled to an award of compensatory damages against Defendants.

III. EVIDENCE

The term "evidence" includes the sworn testimony of witnesses and exhibits that I have received during trial. In addition, on occasion, I sustained objections to questions and either prevented a witness from answering or ordered an answer stricken from the record. You may not draw inferences from unanswered questions, and you may not consider any responses that I ordered stricken from the

record.

Although you should consider only the admitted evidence, you may draw inferences from the testimony and exhibits that are justified in light of common sense and experience. The law recognizes two types of evidence – direct and circumstantial. Direct evidence is the testimony of one who asserts personal knowledge, such as an eyewitness. Circumstantial or indirect evidence is proof of a chain of events that points to the existence or nonexistence of certain facts.

The law does not distinguish between the weight to be given to direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You may rely on either type of evidence in reaching your decision.

IV. WITNESSES

You have had the opportunity to observe all the witnesses. It is now your job to decide how believable each witness' testimony was. You are the sole judges of the credibility of each witness and of the importance of that witness' testimony.

In evaluating a witness' testimony, you should use all the tests for truthfulness that you would use in determining matters of importance to you in your everyday life. You should consider any bias or hostility the witnesses may

have shown for or against any party, as well as any interest the witnesses may have in the outcome of the case. You should consider the witness' memory, their candor or lack of candor, the reasonableness and probability of the witness' testimony, the testimony's consistency or lack of consistency, and its corroboration or lack of corroboration with other credible testimony.

If you find that any witness willfully testified falsely as to any material fact, that is, to any important matter, the law permits you to disregard completely the entire testimony of that witness on the theory that one who testifies falsely about one material fact is likely to testify falsely about everything. You are not required, however, to consider such a witness as totally unworthy of belief. You may accept so much of the witness' testimony as you deem true and disregard what you feel is false. You, as the sole judges of the facts, decide what witnesses you will believe and/or what portion of their testimony you accept, and what weight you will give to that testimony.

In other words, what you must try to do in deciding credibility is to size up a witness in light of the witness' demeanor, the explanations given, and all of the other evidence in the case. Remember, you should always use your common sense, your good judgment, and your own life experience.

V. SUBSTANTIVE LAW

A. Liability

As I noted at the beginning of this case, the Court has already determined that Defendants Champagne Demolition and Joseph A. Champagne did, in fact, violate Section 11(c) of OSHA when, in June 2010, they unlawfully terminated Mr. Miles' employment with Defendant Champagne Demolition in retaliation for his reporting his concerns about illegal asbestos removal at Defendant Champagne Demolition's Gloversville worksite.

B. Compensatory damages

Since the Court has already determined that Defendants violated Mr. Miles' federally protected rights under OSHA by retaliating against him for reporting his concerns about illegal asbestos removal, you must now determine what amount, if any, would fairly compensate Mr. Miles for the harm that he suffered, which was proximately caused by Defendants' unlawful conduct. Such damages are called compensatory damages and include compensation for any economic harm, emotional distress and/or mental anguish that Mr. Miles suffered as a result of Defendants' wrongful conduct. Compensatory damages, however, do not include compensation for the amount of the wages that Mr. Miles would have earned from

Defendants had Defendants not unlawfully terminated his employment. That award has already been made.

An injury or damages is proximately caused by an act whenever it appears from the evidence in the case that the act was a substantial contributing factor in causing the injury or damage.

Plaintiff has the burden of proof to show that Defendants' conduct proximately caused Mr. Miles' injuries. You should not award compensatory damages for speculative injuries, but only for those injuries that Plaintiff has proven Mr. Miles suffered **as a result** of Defendants' conduct.

C. Punitive Damages

Plaintiff also seeks punitive damages. Punitive damages are awarded, in the discretion of the jury, to punish a defendant for acting with "malice" or "reckless indifference" to Mr. Miles' federally protected rights under OSHA to raise safety and health concerns at work or to deter or prevent a defendant and others like the defendant from committing similar acts in the future. A defendant acts with malice if he/it knows that he/it is acting in violation of federal law and does so anyway. A defendant acts with reckless indifference if he/it takes an action with the knowledge that the action may violate the law.

Egregious or outrageous acts may serve as evidence supporting an inference of malice or reckless indifference. In order to justify an award of punitive damages, Plaintiff has the burden of proving, by a preponderance of the evidence, that one or both of Defendants acted maliciously or with reckless indifference to Mr. Miles' federally protected rights.

There is no single factor that determines whether a defendant acted with malice or with reckless indifference to an individual's federally protected rights. In determining whether to award punitive damages, you may consider factors such as whether a defendant (1) acted spitefully or maliciously; (2) showed a blatant disregard for the health and safety of others; (3) failed to investigate employee complaints or take them seriously; or (4) knew that it might be acting in violation of federal law. You may also consider whether a defendant's unlawful conduct had a chilling effect on the willingness of others to report health and safety concerns.

I must emphasize, however, that, at this stage of the proceedings, you are only to consider whether or not Mr. Miles is entitled to an award of punitive damages against one or both Defendants. If you determine that Mr. Miles is entitled to such an award against either Defendant, you will be asked to determine what amount such an award should be during the second phase of this trial. Therefore, you are not to consider the amount of punitive damages, if any, you

believe Mr. Miles is entitled to receive.

VI. CONCLUSION

I have now outlined the rules of law applicable to this case and the processes by which you should weigh the evidence and determine the facts. In a few minutes, you will retire to the jury room for your deliberations. Your first order of business in the jury room will be to elect a foreperson. The foreperson's responsibility is to ensure that deliberations proceed in an orderly manner. The foreperson's vote, however, carries the same weight as the vote of any other juror.

As jurors, you are required to discuss the issues and the evidence with each other. Although you must deliberate with a view to reaching an agreement, you must not violate your individual judgment and conscience in doing so. The proper administration of justice requires you to give full and conscientious consideration to the issues and evidence before you in determining the facts of the case and then apply the law that the Court gives you to those facts.

To return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

During your deliberations, do not hesitate to re-examine your views and change your mind. Do not, however, surrender your honest convictions because of

the opinion of a fellow juror or for the purpose of returning a verdict. Remember, you are not partisans. You are the judges – judges of the facts. Your duty is to seek the truth from the evidence presented to you, while holding the parties to their burdens of proof.

If, in the course of your deliberations, your recollection of any part of the testimony should fail, or if you should find yourselves in doubt concerning my instructions, it is your privilege to return to the courtroom to have the testimony read to you or my instructions further explained. I caution you, however, that the read-back of testimony may take some time and effort. You should, therefore, make a conscientious effort to resolve any questions as to testimony through your collective recollections.

Should you desire to communicate with the Court during your deliberations, please put your message or question in writing. The foreperson should sign the note and pass it to the marshal who will bring it to my attention. I will then respond, either in writing or orally, by having you returned to the courtroom.

Once you have reached a unanimous verdict, your foreperson should fill in the verdict form, date and sign it, and inform the marshal that you have reached a verdict. I have prepared a verdict form for you, and I will now review it with you.