

ORIGINAL

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

PIERCE STREET SAME DAY SURGERY,
L.C.,

Plaintiff,

vs.

ADAM SMITH; WILLIAM O. SAMUELSON;
KEVIN LIUDAHL; JOSEPH A. MORRIS; LEE
M. HILKA; TRI-STATE SPECIALISTS, LLP,
RIVERVIEW ASC REALTY, LLC; AND
RIVERVIEW SURGICAL CENTER, LLC,

Defendants.

KEVIN LIUDAHL; WILLIAM O.
SAMUELSON; ADAM SMITH; JOSEPH A.
MORRIS; TERRY MONK;

Counterclaimants,

vs.

PIERCE STREET SAME DAY SURGERY,
L.C.,

Counterclaim Defendant.

19 OCT 31 A8:43

NO. LACV178878

CLERK OF DISTRICT COURT

BY _____ JURY INSTRUCTIONS

INSTRUCTION NO. 1

Members of the Jury:

This is a civil case brought by the plaintiff, Pierce Street Same Day Surgery Center, L.C., who I will refer to as "Pierce Street." Pierce Street is an ambulatory surgery center, often referred to as an ASC, here in Sioux City where doctors perform outpatient ("same day") surgeries.

Pierce Street has brought various claims against multiple defendants. Four of the defendants are doctors: Kevin Liudahl, Joseph Morris, William Samuelson, and Adam Smith. Prior to this case, they were members or part owners of Pierce Street, along with others who are not parties to this lawsuit.

At all times relevant to this lawsuit, Drs. Liudahl, Morris, Samuelson, and Smith practiced at Tri-State Specialists, another defendant in this lawsuit that will be referred to as "Tri-State." Tri-State is a multispecialty medical clinic also located in Sioux City. Drs. Liudahl, Samuelson, and Smith are physician partners at Tri-State, and Dr. Morris is an employed physician.

Riverview ASC Realty, LLC, and Riverview Surgical Center, LLC, are also defendants. Riverview ASC Realty, LLC, is a company that owns and constructed the medical office building next to the Delta Hotel in South Sioux City, Nebraska. The building includes Riverview Surgical Center as a tenant.

The final defendant is Mr. Lee Hilka. Mr. Hilka is the CEO of Tri-State, the manager of Riverview ASC Realty, and the interim manager of Riverview Surgical Center. Mr. Hilka was formerly the CEO of Pierce Street.

In this case Pierce Street alleges the following against defendants and claims damages as a result:

- Drs. Smith, Samuelson, Liudahl, and Morris breached their contractual obligations in Pierce Street's Operating Agreement;
- Tri-State interfered with Drs. Smith, Samuelson, Liudahl, and Morris's contractual obligations in Pierce Street's Operating Agreement;
- Mr. Hilka interfered with Drs. Smith, Samuelson, Liudahl, and Morris's contractual obligations in Pierce Street's Operating Agreement;
- Mr. Hilka breached his own contractual obligation not to compete with Pierce Street following the end of his employment there;
- Drs. Smith, Samuelson, Liudahl, and Morris interfered with Mr. Hilka's contractual obligations not to compete with Pierce Street following the end of his employment there;
- Drs. Samuelson, Smith, and Hilka breached their duty of loyalty to Pierce Street;
- Drs. Smith, Samuelson, Liudahl, and Morris breached their duty of good faith and fair dealing to Pierce Street;
- Riverview ASC Realty and Riverview Surgical Center interfered with Drs. Smith, Samuelson, Liudahl, and Morris's contractual obligations in Pierce Street's Operating Agreement with Pierce Street; and
- All defendants conspired with one another to commit these wrongs against Pierce Street.

Pierce Street claims damages as a result of these claims. Defendants deny Pierce Street's claims.

Certain defendants have brought counterclaims against Pierce Street. Drs. Liudahl, Samuelson, Morris, Smith, and another physician who is not a defendant—Dr. Terry Monk—allege that Pierce Street breached its Operating Agreement in the way it terminated their membership interests in Pierce Street. Defendants claim damages as a result of their claims. Pierce Street denies the counterclaims.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

100.1M

INSTRUCTION NO. 2

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices, or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

100.2

INSTRUCTION NO. 3

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g., answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 4

In considering the evidence, make deductions and reach conclusions according to reason and common sense. Facts may be proved by direct evidence, circumstantial evidence or both. Direct evidence is evidence from a witness who claims actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts.

The law makes no distinction between direct and circumstantial evidence.

Give all the evidence the weight and value you think it deserves.

Cr100.6m

INSTRUCTION NO. 5

Exhibits admitted into evidence are to be considered along with all the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they are received by you.

Documents referred to but not admitted into evidence will not be available to you during deliberations.

INSTRUCTION NO. 6

Certain charts and summaries were shown to you merely in order to help explain the facts disclosed by the books, records, and other underlying evidence, but were not admitted as evidence in the case. These charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the books, records, or other underlying evidence.

Certain charts and summaries were admitted as evidence. You may use these charts and summaries as evidence, even if the underlying documents and records are not admitted. However, the accuracy or authenticity of those charts and summaries may be challenged. It will be for you to decide how much weight, if any, you will give to them. In making that decision, you should consider all of the testimony you hear about the way in which they were prepared.

INSTRUCTION NO. 7

You will decide the facts from the evidence. Consider the evidence using your observations, common sense, and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory, and knowledge of the facts; and
3. The witnesses' interest in the trial, their motive, candor, bias, and prejudice.

100.9

INSTRUCTION NO. 8

A deposition is testimony taken under oath before trial and preserved in writing, and in some cases, also in a video recording. Certain testimony has been entered into evidence from a deposition by playing portions of the video recording, if the deposition was video recorded, or by reading portions of the written transcript. Consider that testimony as if it had been given in court.

100.5m

INSTRUCTION NO. 9

You have heard testimony from persons described as experts. 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's education and experience, the reasons given for the opinion, and all the other evidence in the case.

100.12

INSTRUCTION NO. 10

An expert witness was asked to assume certain facts were 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.

100.11

INSTRUCTION NO. 11

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

100.20m

INSTRUCTION NO. 12

Although a company is often treated under the law as if it were a person, a company acts only through its agents or employees. Any agent or employee of a company may bind the company by acts and statements made while acting within the scope of the authority delegated to the agent by the company, or within the scope of his or her duties as an employee of the company.

For an act to be within the scope of an employee's authority, the act must be necessary to accomplish the purpose of the employment, and it must be intended to accomplish that purpose.

INSTRUCTION NO. 13

You have heard evidence claiming certain parties and witnesses to this lawsuit made statements before this trial while under oath and/or while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if they had made it under oath during the trial.

If you find such a statement was made and was inconsistent with that person's testimony during the trial, you may also use the statement as a basis for disregarding all or any part of that person's testimony during the trial but you are not required to do so. You should not disregard that person's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

100.15

INSTRUCTION NO. 14

Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

100.3

INSTRUCTION NO. 15

Breach of Contract

Plaintiff Pierce Street asserts Defendants Adam Smith, William O Samuelson, Kevin Liudahl, and Joseph A Morris breached the Pierce Street operating agreement and Lee Hilka breached his employment agreement with Pierce Street.

Counterclaim – Plaintiffs Adam Smith, William O Samuelson, Kevin Liudahl, Joseph A Morris and Terry Monk assert Pierce Street breached the Pierce Street operating agreement.

A plaintiff/counterclaim-plaintiff must prove all of the following propositions:

1. The existence of a contract. The parties stipulate this element has been established.
2. The terms of the contract.
3. The plaintiff/counterclaim-plaintiff has done what the contract requires.
4. The defendant/counterclaim-defendant has breached the contract.
5. The amount of any damage defendant/counterclaim-defendant has caused.

If the plaintiff/counterclaim-plaintiff has failed to prove any of these propositions, the plaintiff/counterclaim-plaintiff is not entitled to damages. If the plaintiff/counterclaim-plaintiff has proved all of these propositions, the plaintiff/counterclaim-plaintiff is entitled to damages in some amount.

INSTRUCTION NO. 16

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.

2400.5

INSTRUCTION NO. 17

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

2400.6

INSTRUCTION NO. 18

Implied Covenant of Good Faith and Fair Dealing

Plaintiff Pierce Street asserts Defendants Adam Smith, William O. Samuelson, Kevin Liudahl, Joseph A. Morris and Lee Hilka breached an implied covenant of good faith and fair dealing.

A contract imposes upon each party an implied covenant of good faith and fair dealing in its performance and enforcement.

Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party.

The covenant of good faith and fair dealing does not give rise to new substantive terms that do not otherwise exist in the contract.

The implied covenant prevents one party from using technical compliance with the contract as a shield from liability when that party is acting for a purpose contrary to that for which the contract was made.

INSTRUCTION NO. 19

Breach of Duty of Loyalty

Plaintiff Pierce Street asserts Defendants Adam Smith, William O. Samuelson and Lee Hilka breached a duty of loyalty to Pierce Street.

To recover for a breach of duty of loyalty claim, Pierce Street must prove all of the following propositions:

1. While an officer or manager of Pierce Street, the following defendants owed a duty of loyalty to Pierce Street: Dr. Samuelson, Dr. Smith, and Mr. Hilka. The parties stipulate this element has been established.
2. Dr. Samuelson, Dr. Smith, or Mr. Hilka breached a duty of loyalty.
3. The breach of the duty of loyalty was a cause of damage to Pierce Street.
4. The amount of damage.

If Pierce Street has failed to prove any of these propositions, Pierce Street cannot recover damages. If Pierce Street has proved all of these propositions, Pierce Street is entitled to recover damages in some amount.

3200.1m

INSTRUCTION NO. 20

An officer/manager of a company owes the company complete loyalty, honesty, and good faith.

That duty is owed the company and its members/owners whenever the actions of the officer/manager concern "matters affecting the general well-being of the corporation."

An officer/manager's first duty was to act in all things of trust wholly for the benefit of the company.

Officers/managers owe a duty to disclose information to those who have a right to know the facts.

INSTRUCTION NO. 21

Intentional Interference with Contract - Essentials for Recovery

Pierce Street asserts the Defendants Adam Smith, William O Samuelson, Kevin Liudahl, Joseph A. Morris, Lee Hilka, Tri-State Specialists, Riverview ASC Realty and Riverview Surgical Center intentionally interfered with a contract.

Pierce Street must prove all of the following propositions:

1. Pierce Street had a contract with one or more of the following Defendants: Hilka, Smith, Samuelson, Liudahl, or Morris.
2. One or more Defendants knew of the contract(s).
3. One or more Defendants:
 - a. Smith, Samuelson, Liudahl, or Morris intentionally and improperly interfered with Hilka's employment agreement with Pierce Street; or
 - b. Hilka, Tri-State Specialists, Riverview ASC Realty or Riverview Surgical Center intentionally and improperly interfered with Smith, Samuelson, Liudahl and Morris's Pierce Street Operating Agreement.
4. The interference caused Hilka, Smith, Samuelson, Liudahl, or Morris not to perform their contractual obligations to Pierce Street.
5. The nature and amount of damage.

If Pierce Street has failed to prove any one or more of these propositions, Pierce Street is not entitled to damages. If Pierce Street has proved all of these propositions, Pierce Street is entitled to damages in some amount.

1200.1m

INSTRUCTION NO. 22

A contract is an agreement between two or more persons to do or not to do something.

1200.3

INSTRUCTION NO. 23

A defendant “knew” of the contract if the defendant either had actual knowledge of the contract or else had knowledge of facts which, if followed by reasonable inquiry, would have led to disclosure of the contracts between Pierce Street and Mr. Hilka, Dr. Smith, Dr. Samuelson, Dr. Liudahl, or Dr. Morris.

1200.4m

INSTRUCTION NO. 24

In determining whether a defendant’s conduct in intentionally interfering with a contract is improper, you should determine whether the conduct was fair and reasonable under the circumstances. In determining whether the conduct was improper you may consider:

1. The nature of the conduct.
2. The defendant’s motive.
3. The interests of the party with which the conduct interferes.
4. The interest sought to be advanced by the defendant.
5. The social interests in protecting the freedom of action of the defendant and the contractual interests of the other party.
6. The nearness or remoteness of the defendant’s conduct to the interference.
7. The relations between the parties.

1200.5

INSTRUCTION NO. 25

A defendant’s interference with a contract is intentional if the defendant either interferes with the contract on purpose or knows the conduct is substantially certain to interfere with the contract.

1200.6

INSTRUCTION NO. 26

Conspiracy

Plaintiff Pierce Street asserts Defendants Mr. Hilka, Dr. Smith, Dr. Samuelson, Dr. Liudahl, Dr. Morris, Tri-State Specialists, Riverview ASC Realty, and/or Riverview Surgical Center conspired to intentionally interfere with a contract and/or breach a duty of loyalty.

In order to recover for the claim of conspiracy, Pierce Street must prove all of the following propositions:

1. A defendant committed one or more the following wrongs: intentional interference with contract or breach of duty of loyalty, as defined in Instructions Nos.19 and 21.
2. The defendant participated in a conspiracy with one or more other defendants to commit the wrongs.
3. The nature and extent of damage.

If Pierce Street has failed to prove any of these propositions, Pierce Street is not entitled to damages. If Pierce Street has proved all of these propositions, Pierce Street is entitled to damages in some amount.

3500.1m

INSTRUCTION NO. 27

A conspiracy is an agreement of two or more persons to commit a wrong against another. The agreement can be oral or written, informal or formal, and need not be detailed. The agreement need not be expressed in words and may be implied and understood to exist from the conduct itself. It may be proved by direct or circumstantial evidence. Merely because two or more persons associate with each other, or meet to discuss common interests or goals does not, by itself, establish a conspiracy.

3500.2

INSTRUCTION NO. 28

A person participates in a conspiracy when the person joins the agreement with the intention to accomplish the wrongful act. A participant need not know all the details of the agreement nor all of the other participants. One who innocently furthers wrongful conduct by another does not participate in a conspiracy.

3500.3

INSTRUCTION NO. 29

I will now provide you with certain instructions on determining what, if any, damages a party is entitled to receive. The fact that I am instructing you on the proper measure of damages should not be considered as an indication that I have any view as to which party is entitled to your verdicts in this case. Instructions as to the measure of damages are given only for your guidance, in the event that you should find that a Plaintiff and/or Counterclaim-Plaintiff is entitled to damages in accord with the other Instructions.

You must not award damages under these Instructions by way of sympathy or punishment. Remember that, throughout your deliberations on damages, as on all other issues, you must not engage in any speculation, guess or conjecture. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice for or against any of the parties. Rather, you must use your sound judgment based upon an impartial consideration of the evidence.

In arriving at the amount of damages on a claim, you cannot establish a figure by taking down the estimate of each juror as to damage and agreeing in advance that the average of those estimates shall be your award of damages for that claim.

INSTRUCTION NO. 30

The measure of damages is an amount that would place Plaintiff and/or Counterclaim-Plaintiffs in as good a position as it/they would have enjoyed if the contract had been performed.

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

INSTRUCTION NO. 31

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

200.1m

INSTRUCTION NO. 32

All parties asserting claims for damages have a duty to mitigate their damages; that is, they have a duty to exercise ordinary care to reduce, minimize, or limit their damages. However, they have no duty to do something that is unreasonable under the circumstances.

To establish that a party failed to mitigate its/his damages, the defendant(s) must prove all of the following:

1. There was something the claiming party could do to mitigate its/his damages.
2. Requiring the party to do so was reasonable under the circumstances.
3. The claiming party acted unreasonably in failing to undertake the mitigating activity.
4. The claiming party's failure to undertake the mitigating activity caused an identifiable portion of its/his damages.

If the defendant(s) prove each of these elements, then you must reduce any item of damages by the amount the claiming party reasonably could have avoided if it/he had undertaken the mitigating activity. If the defendant(s) failed to prove one or more of these elements, then it has not proven that the claiming party failed to mitigate its/his damages.

400.7m

INSTRUCTION NO. 33

Punitive damages may be awarded if Pierce Street has proven by a preponderance of clear, convincing, and satisfactory evidence the defendants, Adam Smith, William O. Samuelson, Kevin Liudahl, Joseph A. Morris, Lee Hilka, Tri-State Specialist, Riverview ASC Realty and Riverview Surgical Center's intentional interference with contract and/or breach of duty of loyalty constituted a willful and wanton disregard for the rights of Pierce Street and caused actual damage to Pierce Street.

Punitive damages are not intended to compensate for injury, but are allowed to punish and discourage the defendants and others from like conduct in the future. You may award punitive damages only if the defendants' intentional interference with contract or breach of duty of loyalty warrants a penalty in addition to the amount you award to compensate for Pierce Street's actual injuries.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of the defendants' conduct that harmed Pierce Street.
2. The amount of punitive damages which will punish and discourage like conduct by the defendants. You may consider each defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of the defendants' wealth or ability to pay.
3. Pierce Street's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to Pierce Street.
4. The existence and frequency of prior similar conduct.

210.1m

INSTRUCTION NO. 34

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

210.4

INSTRUCTION NO. 35

Evidence is clear, convincing, and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

100.19

INSTRUCTION NO. 36

You may not communicate about this case before reaching your verdict. This includes cell phones and electronic media such as text messages, Facebook, Instagram, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete, or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. Failure to follow

these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

It is important that we have your full and undivided attention during this trial.

100.23m

INSTRUCTION NO. 37

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.

100.21

INSTRUCTION NO. 38

In conducting your deliberations and returning your verdict, you must follow these rules:

First, when you go to the jury room, you must select a foreperson to preside over your discussions and to speak for you here in court. It will be his or her duty to see that discussion is carried on in an orderly fashion, the issues are discussed fully and freely, and each juror is given an opportunity to express his or her views.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may hesitate later to change an announced position, even if shown it may be incorrect.

You should try to reach agreement, if you can do so, without violence to your individual judgment. Do not be afraid to change your opinion if the discussion persuades you that you should, but do not come to a decision simply because other jurors think it is right or simply to reach a verdict. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to their views. Remember, at all times, you are not partisans,

but judges of the facts. Your only interest in this case is to seek the truth from the evidence and to do justice.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the court attendant, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. If you are brought into open court, you should not tell anyone - including me - how your vote stands numerically, unless I specifically ask you for that information.

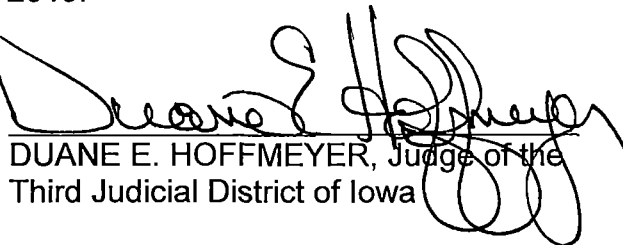
Fourth, your verdict must be based solely on the evidence and on the law I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be. That is entirely for you to decide.

Fifth, I am giving you a special verdict form with two parts. A verdict form is simply the written notice of the decisions that you reach in this case. You should carefully review the verdict form and answer the questions presented in the form as instructed.

During the first six hours of your deliberations, excluding meals and recesses outside the jury room, your decisions must be unanimous. If you all agree, the verdict form must be signed by your foreperson. After deliberating for six hours from 3:25 o'clock P.m., excluding meals and recesses outside the jury room, then it is necessary that only seven of you agree on the answers to the questions. In that case, the verdict forms must be signed by all seven jurors who agree.

When you have agreed upon the verdict and the verdict form has been signed as appropriate, please advise the court attendant that you are ready to return to the courtroom.

Dated this 29th day of October 2019.


DUANE E. HOFFMEYER, Judge of the
Third Judicial District of Iowa