

INSTRUCTIONS

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CLERK U.S. DISTRICT COURT  
MIDLAND DISTRICT  
TEXAS

MEMBERS OF THE JURY:

It is my duty to instruct you on the law applicable to this case.

The instructions which I am about to give you can be roughly divided into two parts: The first dealing with your duties and functions as jurors generally; the second with the specific issues in this case.

Please listen to all instructions carefully. Your thoughtful attention as I read the instructions is essential.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in this case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law contained in these instructions.

First, the general instructions:

**INSTRUCTION NO. 1**

Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict on any view of the law other than that given in the instructions of the court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in the case.

In deciding the facts of this case you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the Court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. A corporation is entitled to the same fair trial at your hands as is 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.

## INSTRUCTION NO. 2

It is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record.

It is not necessary that every fact be proved directly by a witness or an exhibit. A fact may be proven indirectly by other facts or circumstances, from which it usually and reasonably follows according to the common experience and observation of mankind. This is called circumstantial evidence, which you are to consider along with other evidence in the case.

Statements, objections, or arguments made by the lawyers are not evidence. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and to call your attention to certain facts or inferences that might otherwise escape your attention. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case.

While you are to consider only the evidence in the case, you may draw any reasonable inferences from the testimony and exhibits that you find to be justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts established by the testimony and the evidence in the case.

### INSTRUCTION NO. 3

You must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to his or her testimony. In weighing the testimony of a witness you should consider: the witness's relationship to the plaintiff or defendant; the interest the witness had, if any, in the outcome of the case; the witness's manner of testifying; the witness's opportunity to observe or acquire knowledge concerning the facts about which the witness testified; the witness's candor, fairness and intelligence; and the extent to which the witness had been supported or contradicted by other credible evidence. You may accept or reject the testimony of any witness in whole or in part.

The weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to a fact is more credible than the testimony of a larger number of witnesses to the contrary.

A witness may be discredited or impeached by contradictory evidence, a showing that he or she testified falsely concerning a material matter, or evidence that at some other time the witness has said or done something, or has failed to say or do something, inconsistent with the witness's present testimony.

If you believe that any witness has been impeached, you can believe or disbelieve that witness to the extent you find to be appropriate. If you find that a witness has testified falsely as to a material matter, you may find that his or her testimony is false in its entirety.

**INSTRUCTION NO. 4**

I do not and will not mean to indicate any opinion as to the facts by my rulings, conduct or remarks during this trial; but if you think I have, you should disregard those remarks or that conduct because you are the sole judges of the facts.

This concludes the general instructions. Now I will instruct you on the claims in this case.

**INSTRUCTION NO. 5**

Your task in this case is to determine what damages, if any, are owed by Time Warner Cable, Inc. to Dennis Verhoff over a certain time period. I have already decided, for reasons that do not concern you, and about which you should not speculate, that Time Warner is liable to Mr. Verhoff for any damages which he has proven resulted from the loss of his job with Time Warner.

The period for which Mr. Verhoff may be entitled to recover damages is October 1, 2004 to November 27, 2006.

Your job is to determine what, if anything, Time Warner owes to Verhoff for the damages he incurred from October 1, 2004 to November 27, 2006.

**INSTRUCTION NO. 6**

**The burden is on Verhoff to prove his damages by a "preponderance of the evidence."**

**To prove something by a preponderance of the evidence means to prove that something is more likely so than not so.**

**If you find that the weight of the evidence as to a material fact is equally balanced, the party having the burden of proof as to that fact has not met its burden of proof as to that fact.**

**In determining whether any fact in issue has been proved by a preponderance of the evidence, you may consider all the evidence, regardless of which party produced that evidence.**

INSTRUCTION NO. 7

You must award Mr. Verhoff the amount of any wages he would have earned <sup>and</sup> employment benefits to which he would have been entitled had he remained employed by Time Warner from October 1, 2004, to November 27, 2006.

You may not award damages to compensate Verhoff for emotional distress. You may not award damages as a punishment, and damages cannot be imposed or increased to penalize ~~the~~ Time Warner. You may not award damages for court costs or attorney fees.

If you find that Mr. Verhoff is entitled to an award of damages, you may not deduct from that award any sums received from the Social Security Administration.



INSTRUCTION NO. 8

*MS. Verhoff*  
*-Missing*  
has a duty to use reasonable efforts under all the circumstances to lessen damages

To be entitled to an award of damages, Mr. Verhoff must have made reasonable effort under all the circumstances to lessen his damages by seeking employment. This obligation is referred to as “mitigation of damages.”

Time Warner has the burden of proving by a preponderance of the evidence that Mr. Verhoff failed to mitigate his damages for loss of compensation.

If you determine Mr. Verhoff is entitled to damages, you must reduce these damages by what, if anything, he could reasonably have earned during the period from October 1, 2004, to November 27, 2006.

To mitigate his damages, Mr. Verhoff must accept employment that is “of a like nature.” In determining whether employment is “of a like nature,” you may consider

1. The type of work,
2. The hours worked,
3. The compensation,
4. The job security,
5. The working conditions, and
6. Other conditions of employment

You must decide whether Verhoff acted reasonably in not seeking or accepting a particular job. If you determine Verhoff did not make reasonable efforts under all the circumstances to obtain another similar job, you must decide whether any damages resulted from his failure to do so.

**You may not award Mr. Verhoff for any portion of his damages which results from failure on his part to make reasonable efforts under all the circumstances to reduce his damages.**

**INSTRUCTION NO. 9**

When you retire to begin deliberating, you should first select a foreperson who will preside over your deliberations. He or she does not, however, have any greater say in your deliberations or the outcome than any other juror.

Your verdict must be unanimous: all twelve of you must agree on the final verdict.

Deliberate openly and fairly. Listen to the views of your fellow jurors, just as you would like them to listen to your views.

Do not change your mind just to reach a verdict. On the other hand, do not close your mind to the views and observations of your fellow jurors.

Remember: you are not partisans – you are judges – judges of the fact.

If you need to communicate with the court, notify the Clerk and give him or her your communication in writing, signed by your foreperson.

Never disclose the present state of your tentative vote until you have reached a verdict.

When you have reached a verdict, fill out the appropriate form and notify the clerk.

You may now retire to deliberate.

**JURY VERDICT FORM**

After taking into account Verhoff's duty to mitigate his damages, what does Time Warner owe to Verhoff in wages, salary and employment benefits for the period from October 1, 2004 to November 27, 2006?

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