Duty of Jury to Find Facts and Follow Law

Members of the jury, now that you have heard all the evidence and the arguments of the attorneys, it is my duty to instruct you on the law that applies to this case.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. Also, you must not read into these instructions or into anything the Court may have said or done as giving any suggestion as to what verdict you should return - that is a matter entirely up to you.

Do not worry about memorizing or writing down all of the instructions as I state them, because I will send a written copy of my instructions into the jury room. However, you must know that the law is as I will give it to you from the bench; the written copy is merely a guide to assist you.

What Is Evidence

The evidence from which you are able to decide what the facts are consists of:

1. the sworn testimony of witnesses;

2. the exhibits which have been received into evidence; and

3. any facts to which the lawyers have agreed or stipulated.

What Is Not Evidence

Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their openings statements and closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the Court's ruling on it.

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered.

4. Anything you may have seen or heard when the Court was not in session is not evidence. You are to decide the case solely on the evidence received at trial.

Direct and Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as the testimony of an eye witness. Circumstantial evidence is proof of one or more facts from which you could find another fact.

You should consider both kinds of evidence. As a general rule, the law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Direct evidence can prove a material fact by itself. It does not require any other evidence. It does not require you to draw any inferences. A witness's testimony is direct evidence when the witness testifies to what she saw, heard, or felt. In other words, when a witness testifies about what is known from her own personal knowledge by virtue of her own senses, what she sees, touches, or hears–that is direct evidence. The only question is whether you believe the witness's testimony. A document or physical object may also be direct evidence when it can prove a material fact by itself, without any other evidence or inference. You may, of course, have to determine the genuineness of the document or object.

Circumstantial evidence, however, cannot prove a material fact by itself. Rather, it is evidence that tends to prove a material fact when considered together with other evidence and by drawing

inferences. There is a simple example of circumstantial evidence that I used at the beginning of this trial that you may recall.

Assume that when you got up this morning it was a nice, sunny day. But when you looked around you noticed that the streets and sidewalks were very wet. You had no direct evidence that it rained during the night. But, on the combination of facts that I have asked you to assume, it would be reasonable and logical for you to infer that it had rained during the night.

Not all circumstantial evidence presents such a clear compelling inference; the strength of the inferences arising from circumstantial evidence is for you to determine. It is for you to decide how much weight to give to any evidence.

Inferences from circumstantial evidence may be drawn on the basis of reason, experience, and common sense. Inferences may not, however, be drawn by guesswork, speculation, or conjecture.

The law does not require a party to introduce direct evidence. A party may prove a fact entirely on circumstantial evidence or upon a combination of direct and circumstantial evidence. Circumstantial evidence is not less valuable than direct evidence.

You are to consider all the evidence in the case, both direct and circumstantial, in determining what the facts are, and in arriving at your verdict.

Inference

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts which have been proved at trial. As jurors you are permitted to make inferences of fact from those facts which you find have been proved in the case. In order for you to properly draw an inference, however, you must first find that the underlying facts from which the inference flows have been proved by a preponderance of the evidence and you must find that the facts to be inferred are, indeed, reasonably inferred. An inference is reasonable when the facts proved in the case point to one conclusion of fact as being more natural and plausible than other conclusions that might be drawn.

Deposition Testimony

During the trial, you have heard reference to the terms "examination under oath" and "deposition." As it applies in this case, these terms mean sworn testimony, under oath, given by a witness before this trial began. To the extent that you have heard reference to and quotations from such "deposition" or "examination under oath," you may give it the same credibility or weight as live witness testimony, if any, as you think it may deserve.

Credibility of Witnesses

In deciding the facts of this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it at all. In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and any bias or prejudice the witness may have;
5. whether other evidence contradicted the witness' testimony; and
6. the reasonableness of the witness' testimony in light of all the evidence.

Witness - Impeachment - Prior Statements

In assessing the credibility of a witness, you may also consider whether, on some prior occasion, the witness made statements that contradict the testimony he or she gave at the time of trial. If you conclude that a witness did, at some prior time, make statements that were materially different from what the witness said during this trial, you may take this into account in assessing the credibility of such witness, or determining the weight that you will give to such witness's testimony.

Witnesses - Number - Weight of Testimony

In evaluating the testimonial evidence, remember that you are not required to believe something to be a fact simply because a witness has stated it to be a fact and no one has contradicted what that witness said. If, in the light of all of the evidence, you believe that the witness is mistaken or has testified falsely or that he or she is proposing something that is inherently impossible or unworthy of belief, you may disregard that witness' testimony even in the absence of any contradictory evidence.

You should also bear in mind that it is not the number of witnesses testifying on either side of a particular issue that determines where the weight of the evidence lies. Rather, it is the quality of the witnesses' testimony that counts.

Thus, just because one witness testifies on one side of an issue and one witness testifies on the other side does not necessarily mean that you must consider the evidence evenly balanced. If you feel that one of the witnesses was more credible than the other, for whatever reason, you may find that the weight of the evidence lies on the side of that witness.

Similarly, just because there may be more witnesses testifying on one side of an issue than on the other does not mean that the weight of the evidence lies in favor of the greater number of witnesses. Once again, it is the credibility or quality of the testimony that determines where the weight of the evidence lies.

Witnesses - Expert Witnesses

During this trial, you have heard testimony from witnesses who claim to have specialized knowledge in a technical field. Such persons are sometimes referred to as expert witnesses. Because of their specialized knowledge, they are permitted to express opinions which may be helpful to you in determining the facts.

Since they do have specialized knowledge, the opinions of expert witnesses, whether expressed personally or in documents which have been admitted into evidence, should not be disregarded lightly.

On the other hand, you are not required to accept such opinions just because the witnesses have specialized knowledge.

In determining what weight to give to the testimony of a so-called expert witness, you should apply the same tests of credibility that apply to the testimony of any other witness. That is to say, you should consider such things as the witness':

-- opportunity to have observed the facts about which he or she testified; and

-- apparent candor or lack of candor.

In addition, you should take into account the witness':

-- qualifications, especially in comparison to the qualifications of expert witnesses who may have expressed contrary opinions; and

-- the accuracy of the facts upon which the witness's opinions were based.

In short, you should carefully consider the opinions of expert witnesses, but they are not necessarily conclusive.

Burden of Proof

The law imposes on the Plaintiffs the responsibility or burden of proving their claims. It is not up to the Defendants to disprove the claim. Furthermore, the Plaintiffs must prove the things they claim by what is called a fair preponderance of the evidence, which I will now define in more detail.

Burden of Proof - Fair Preponderance

I have just told you that the burden of proof in this case is on the person making the claims in question, and in a few minutes I am going to describe in detail just what the Plaintiffs must prove in order to prevail on their claims.

The Plaintiffs must prove their claims by what the law refers to as "a fair preponderance of the evidence" which is another way of saying that the Plaintiffs must prove them by "the greater weight of the evidence."

To put it another way, you must be satisfied that the evidence shows that what the party making a claim is claiming is "more probably true than not."

Do not confuse the burden of proving something by a fair preponderance of the evidence with the burden of proving something beyond a reasonable doubt. As most of you probably know or have heard, in a criminal case the prosecution must prove the defendant is guilty beyond a reasonable doubt. That is a very stringent standard of proof. However, this is not a criminal case. Therefore, in order to prevail, the Plaintiffs need not prove their claims beyond a reasonable doubt; they need only prove the claims by a fair preponderance of the evidence.

Perhaps the best way to explain what is meant by a fair preponderance of the evidence is to ask you to visualize an old fashioned scale with two counter balancing arms and use it to

mentally weigh the evidence with respect to the claims being made by the Plaintiffs.

If, after you have heard all the evidence relevant to a claim, you determine that the scale tips in favor of the Plaintiffs, no matter how slightly it may tip, then the Plaintiffs have sustained their burden of proving that particular claim to you by a fair preponderance of the evidence because they have made the scale tip in their favor.

If, on the other hand, you determine that the scale tips in favor of the Defendants, or that the scale is so evenly balanced that you cannot say whether it tips one way or the other, then the Plaintiffs have failed to prove that claim by a fair preponderance of the evidence because they has not made the scale tip in their favor.

Speculation

The causation element requires that the Defendants conduct be a substantial factor causing the Plaintiff harm. The Defendants' conduct need not be the sole cause of the injury: it is enough that the Plaintiff introduces evidence from which reasonable men and women may conclude that it is more probable that the event was caused by the defendant than that it was not.

It remains the responsibility of the party with the burden of proof to present more than a mere scintilla of evidence in its favor; and to do more than rely on conjecture or speculation in support of its position. To the contrary, the evidence offered must make the existence of the fact to be inferred more probable than its nonexistence. If you find that the Plaintiff has met his burden of proof that the Defendants' actions caused his damages, the Defendants then have the burden of proof to prove, by a preponderance of the evidence, that the Plaintiff was not damaged by Defendants' actions in placing him on administrative leave.

Plaintiffs' Claims

I am now going to instruct you on the specific law that applies to the claims in is case. The law will guide you as to the factual determinations you must make. You must accept the law that I give you, whether you agree with it or not.

From this point on, when I use the term "the Plaintiff," I am referring to Stephen Chrabaszcz, Jr.

As I told you at the beginning of this trial, this case has several claims, or what the law refers to as "counts." The first count is for breach of contract. The Plaintiff alleges that the Defendants breached the employment agreement that the Plaintiff had with the Johnston School Committee. The second count is for defamation; the Plaintiff alleges that he was defamed by the Defendants. The third count is for loss of consortium. This count is brought by the Plaintiff's wife, Barbara Chrabaszcz, and by the Plaintiff's three children, Stephen Chrabaszcz III, Jessica Chrabaszcz, and Adam Chrabaszcz.

Now I will give you more detail about each of the counts.

Count One: Breach of Contract

I am instructing you as a matter of law that the Plaintiff had a valid and enforceable contract with the Defendants. In the event that you find that Defendants failed to comply with the provisions of the Contract that required the Defendants to provide the Plaintiff with a performance evaluation or attorneys fees, then you must award damages proven to the Plaintiff.

Count Two: Defamation

In order to prove his defamation count, the Plaintiff must prove, by a preponderance of evidence, each of the following four elements:

(1) A false and defamatory statement made against him;

(2) An unprivileged publication of that statement to a third party;

(3) Fault amounting at least to negligence on the part of the person or entity who published the statement; and

(4) Damages as a result of the statement.

If you find that the Defendants uttered a false and defamatory statement about the Plaintiff to a third party, then you must find for the Plaintiff.

I instruct you that a defamatory statement has been defined as false words which tend to degrade a party in society or bring him into public hatred and contempt.

Defamation - Privileged Statements

The second element of the defamation claim requires an unprivileged publication of a statement to a third party.

In certain situations, individuals have a qualified privilege to make statements that may otherwise be false or defamatory. A qualified privilege is not absolute; rather, it raises a presumption that a statement was made for the common good. However, this presumption can be overcome.

A qualified privilege applies to situations where, as a matter of public policy or otherwise, an individual acting in good faith believes that he or she had a duty and/or an obligation to speak out; in other words, the interests of the community at large required them to speak out. A qualified privilege also applies to communication by a former employer to a prospective employer with regard to that former employee's work characteristics.

If you find that a qualified privilege applies to a defamatory statement, then you must next decide whether the statement was made for the common good or if the statement was made out of malice. In this context, malice means that the statement was motivated by personal spite or ill will. It is the Plaintiff's burden to prove, by a preponderance of the evidence, that the statement was motivated by malice.

If you find that a statement was motivated by malice, then that statement was unprivileged.

Count Three: Loss of Consortium

Before you begin to examine the loss of consortium claim, you first must have already found that the Plaintiff prevailed on his defamation claim. This is so because the loss of consortium claim is dependant upon the defamation claim. In other words, if you determine that the Plaintiff did not prevail on his defamation claim, then you cannot reach the loss of consortium claim.

In the event you find that the Plaintiff did prevail on his defamation claim, then you must consider whether the Plaintiff's wife, Barbara Chrabaszcz, and the Plaintiff's three children, Stephen Chrabaszcz III, Jessica Chrabaszcz, and Adam Chrabaszcz, have proven their loss of consortium claims. These claims for loss of consortium are separate and distinct claims that belong to Barbara Chrabaszcz, Stephen Chrabaszcz III, Jessica Chrabaszcz and Adam Chrabaszcz. These loss of consortium claims are not part of the claims brought by the Plaintiff, Stephen Chrabaszcz Jr.

In order to find for Barbara Chrabaszcz, Stephen Chrabaszcz III, Jessica Chrabaszcz, and Adam Chrabaszcz, you must find that each of them proved to you a loss of companionship or material services or a loss of support as a result of the Defendants' defamation of the Plaintiff.

The law permits a spouse and/or minor child to make a claim against individuals whose actions have been the proximate cause of

injuries to the other spouse. If the injury sustained by the Plaintiff proximately caused the other spouse and/or minor child to suffer a loss of the society, comfort and companionship of the injured spouse, then the spouse and/or minor child suffering that loss is entitled to be compensated.

Proximate Cause

A proximate cause of an injury is when the act or conduct of the Defendants produces an injury to the Plaintiff. In other words, but for the conduct of the Defendants, the injury to Plaintiff would not have occurred.

The Defendants are liable for the natural and probable consequences of their actions. The Defendants' conduct may be the proximate cause of the Plaintiff's injury even if it is not the sole cause, the only cause or the latter cause of the Plaintiff's injury. The Defendants' conduct is the proximate cause if it concurs and unites with some other cause which acting at the same time produces the injury to the Plaintiff.

Eggshell Skull Doctrine

You should bear in mind it is settled principle that when a Defendant's wrongful act causes injury, he is fully liable for the resulting damage even though the injured Plaintiff had a preexisting condition that made the consequences of the wrongful act more severe than they would have been for a normal victim. Thus, even if you find that the Plaintiff had a preexisting condition rendering him more sensitive, you must still find the Defendants liable for all resulting damage, irrespective of such condition.

Damages - Introductory

I will now turn to the question of damages. In discussing damages, I do not, in any way, mean to suggest an opinion that the Defendants are legally responsible or liable for the damages being claimed. That is a matter for you to decide.

Since I do not know how you are going to decide the case, I am instructing you about damages only so that if you find that the Defendants are liable, you will know what principles govern an award of damages.

You are instructed on damages in order that you may reach a sound and proper determination of the amount you will award as damages, if any, in the event that you find the Defendants are liable. You need consider the question of damages only if you find that the Defendants are liable. If you do not find liability, no award of damages can be made.

Since damages are an element of the Plaintiffs' claims, damages must be proven. The burden of proof as to the existence and extent of damages is on the party claiming to have suffered those damages and is the same as to the other elements of their claims - a fair preponderance of the evidence. In other words, you may make an award for damages only to the extent that you find damages have been proven by the evidence. You may not base an award of damages or the amount of any such award on speculation or guesses or sympathy. You must base any award of damages on the evidence presented and on what

you consider to be fair and adequate compensation for such damages as you find have been proven.

Damages - Compensatory

If you find the Defendants liable to the Plaintiffs, then you must consider the question of damages. Damages are defined in law as that amount of money that will compensate injured parties for the harm or loss that they have sustained. The rationale behind compensatory damages is to restore persons to the positions they were in prior to the harm or the loss. Compensatory damages, then, are the amount of money which will replace, as near as possible, the loss or harm caused to a person.

When you assess damages, you must not be oppressive or unconscionable, and you may assess only such damages as will fairly and reasonably compensate the Plaintiffs insofar as the same may be computed in money. You must confine your deliberations to the evidence, and you must not indulge in guesswork, speculation or conjecture.

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Damages - Breach of Contract

The Plaintiff must prove his damages by a fair preponderance of the evidence. You may award the amount of damages that will put the Plaintiff in the same position the Plaintiff would have been in had the breach not occurred. Damages must proximately result from the breach of the contract. The Plaintiff is entitled to recover the damages that were originally contemplated by the parties when the contract was entered into.

The Plaintiff has the burden of proving by competent evidence the damages sustained as a result of a breach of contract. The Plaintiff must prove damages by a reasonable degree of certainty and Plaintiff may not rely on speculation. The underlying rationale on a breach of contract action is to place the innocent party in the position he/she would have been in if the contract had been fully performed.

Calculation of Damages

The Plaintiff is required to prove by a fair preponderance of the evidence any loss to his earning capacity. In awarding damages for impairment of earning capacity, the award must reflect the present value of the anticipated loss of future earnings. The present cash value is the sum, if invested in a reasonably safe investment, would yield the amount of money that would constitute the diminution of the Plaintiff's earning capacity for the period of time that you find the impairment to exist.

Damages - Defamation

The burden is on the Plaintiff to prove by a fair preponderance of the evidence that he has suffered damages as a proximate result of the Defendants' defamation. The Plaintiff should be compensated for all damages proximately resulting from the Defendants' defamation.

In assessing damages, you may consider evidence which establishes that the Plaintiff's medical treatment was necessary as a result of the subject defamation, and you may consider evidence which establishes the reasonable charge for the medical, hospital and/or nursing services.

Mental suffering is a compensable element of damages. Mental suffering may include nervousness, anxiety, worry, shock, humiliation, embarrassment or indignity.

In assessing damages, you may consider evidence tending to show that the Plaintiff lost wages as a result of his injuries. The Plaintiff is entitled to be compensated for the amount of earnings he was reasonably certain to have earned if he had not been injured by the Defendants' conduct.

If you find from the evidence that the Plaintiff's ability to earn money in the future has been impaired, you must decide what the Plaintiff would have been capable of earning and the extent to which his capacity to earn money has been impaired.

Damages - Loss of Consortium

The claim for loss of consortium is a separate and distinct claim that belongs to Plaintiffs' Barbara Chrabaszcz, Stephen F. Chrabaszcz III, Jessica Chrabaszcz and Adam Chrabaszcz alone. It is not part of the claims of the Plaintiff, Stephen F. Chrabaszcz, Jr. Stephen F. Chrabaszcz, Jr.'s claims are not to be considered as part of the damages to be awarded, if any, to his injured spouse and/or children.

In arriving at the amount of damages, if any, which you will award for loss of consortium, you should consider what is fair compensation for the loss of the ordinary services and society and comfort and companionship, both physical and emotional, that spouses provide to each other.

Your award must derive from the evidence which has been introduced to show just how much Barbara Chrabaszcz, Stephen F. Chrabaszcz III, Jessica Chrabaszcz and Adam Chrabaszcz have lost in terms of the society, companionship and comfort from the Plaintiff, and how much he/she will continue to lose in the future. You may consider all of the circumstances as shown by the evidence including the nature of the relationship between these family members prior to the injury as well as after, and the prospects for their relationships as a result of the injuries of the Plaintiff, Stephen F. Chrabaszcz, Jr.

Selection of Foreperson and Duty to Deliberate

When you begin your deliberations, you must elect one member of the jury to serve as your foreperson. The foreperson will preside over the deliberations and speak for you here in Court. You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous. Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion during the course of the deliberations if the discussion persuades you that should. Do not come to a decision simply because other jurors think it is right.

Communications with the Court

If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal, signed by the foreperson. No member of the jury should ever attempt to contact me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open Court.

Return of Verdict

A verdict form has been prepared for you by the Court. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it, and advise the Court that you are ready to return to the courtroom.

Verdict - Unanimity Required

In order to return a verdict in this case, all of you must agree as to what that verdict will be. You cannot return a verdict for either party unless your decision is unanimous.

Therefore there are two things that you should keep in mind during the course of your deliberations.

On the one hand, you should listen carefully as to what your fellow jurors have to say and should be open minded enough to change your opinion if you become convinced that it was incorrect.

On the other hand, you must recognize that each of you has an individual responsibility to vote for the verdict that you believe is the correct one based on the evidence that has been presented and the law as I have explained it. Accordingly, you should have the courage to stick to your opinion even though some or all of the other jurors may disagree as long as you have listened to their views with an open mind.

Jury Recollection Controls – Rehearing Testimony

If any reference by the Court or by an attorney to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

Occasionally, juries want to rehear testimony. Understand that in a short trial, generally, your collective recollection should be sufficient for you to be able to deliberate effectively. However, if you feel that you need to rehear testimony, I will consider your request. However keep in mind that this is a time-consuming and difficult process, so if you think you need this, consider your request carefully and be as specific as possible.

Copy of Instructions

I have instructed you on the law that governs your deliberations. As I mentioned at the beginning, I will send into the jury room one written copy of my instructions. You are reminded, however, that the law is as I have given it to you from the bench; and the written copy is merely a guide to assist you.