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US DISTRICT COURT
DISTRICT OF NEBRASKA
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

GAYE LYNN SCHAFFART, Plaintiff, v. ONEOK, INC., Defendant.	8:09CV367
JERRY PETERS, Plaintiff, v. ONEOK, INC., Defendant.	8:09CV368 COURT'S CHARGE TO THE JURY

INSTRUCTION NO. 1

Now that you have heard the evidence and the arguments of counsel have been made, it is my duty to inform you of the legal principles and considerations you are to use in arriving at a proper verdict.

In accordance with the oath which each of you took when you were selected as jurors to try this case, it is your duty to determine the disputed issues of fact in this case from the evidence produced and seek thereby to reach a verdict which shall speak the truth of the case and thereby do justice between the parties hereto, uninfluenced by sympathy, favor, affection or prejudice for or against any party. As I have already informed

you, you are bound to receive and accept as correct the law as given you in this charge, and you are not privileged to entertain an opinion as to the law or what the law should be which conflicts in any respect with the law as stated in this charge. However, I have not attempted to embody all the law applicable to this case in any one of the instructions contained in this charge, and therefore, you must consider the charge in its entirety, giving due weight to each instruction, and construing each instruction in the light of, and in harmony with, the other instructions, and so apply the principles set forth to all of the evidence received during the trial.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than given in these instructions, just as it would be a violation of your sworn duty as judges of the facts, to base a verdict upon anything but the evidence in the case and the reasonable inferences arising from such evidence.

INSTRUCTION NO. 2

At the outset, I urge you to make every effort to reach an agreement in your deliberations. Inconclusive trials are not desirable. A common understanding among competent and intelligent people ought to be possible.

However, this observation must not be construed by any juror as a suggestion of the abandonment of an opinion held understandably and earnestly, just for the sake of agreement. The Court must never coerce agreements by jurors. It is appropriate to suggest that if you should find yourselves in apparent disagreement, each of you should carefully reexamine your opinions before assuming a position of dissent.

I should give you one preliminary word of caution. It is seldom wise or beneficial for a juror to make an emphatic expression of his or her opinion of the case, or to announce a determination to stand for a certain verdict, immediately upon entering the jury room at the beginning of deliberations. The reason for this is obvious. We are all human, and it is difficult to recede from a position once it has been firmly and definitely stated.

INSTRUCTION NO. 3

While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are 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 which have been established by the testimony and evidence in the case.

You have heard the terms direct evidence and circumstantial evidence. You are instructed that you should not be concerned with those terms since the law makes no distinction between the weight to be given to direct and circumstantial evidence.

INSTRUCTION NO. 4

During the trial I have ruled on objections to certain evidence. You must not concern yourselves with the reason for such rulings as they are controlled by rules of law.

You must not speculate or form or act upon any opinion as to how a witness might have testified in answer to questions which I have rejected during the trial, or upon any subject matter to which I have forbidden inquiry.

In coming to any conclusion in this case, you must be governed by the evidence before you and by the evidence alone.

You have no right to indulge in speculation, conjecture or inference not supported by the evidence.

The evidence from which you are to find the facts consists of the following: (1) the testimony of the witnesses;(2) documents and other things received as exhibits; and (3)any facts that have been stipulated -- that is formally agreed to by the parties.

The following things are not evidence: (1) statements, comments, questions and arguments by lawyers for the parties; (2) objections to questions; and (3) anything you may have seen or heard about this case outside the courtroom.

INSTRUCTION NO. 5

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In determining the weight to be given to the testimony of the witnesses, you should take into consideration their interest in the result of the suit, if any appears, their conduct and demeanor while testifying, their apparent fairness or bias, their relationship to the parties, if any appears, their opportunities for seeing or knowing and remembering the things about which they testified, the reasonableness or unreasonableness of the testimony given by them, any previous statement or conduct of the witness that is consistent or inconsistent with the testimony of the witness at this trial, and all of the evidence, facts, and circumstances proved which tend to corroborate or contradict such evidence, if any appear. You are not bound to take the testimony of any witness as true, and should not do so if you are satisfied from all the facts and circumstances proved at the trial that such witness is mistaken in the matter testified to, or that for any other reason appearing in the evidence, the testimony is untrue or unreliable.

The fact that one side may have used a greater number of witnesses or presented a greater quantity of evidence should not affect your decision. Rather, you should determine which witness or witnesses, and which evidence appears accurate and trustworthy. It is the weight of the evidence that counts -- not the number of witnesses.

The testimony of a single witness which produces in your minds belief in the likelihood of truth is sufficient for proof of any fact, and would justify a verdict in accordance with such testimony, even though a number of witnesses may have testified to the contrary if, after consideration of all of the evidence in the case, you hold greater belief in the accuracy and reliability of the one witness.

INSTRUCTION NO. 6

By a preponderance of the evidence is meant that such evidence, when considered and compared with that opposed to it, is more convincing and produces in your minds a belief that what is sought to be proved is more likely true than not. This rule does not require proof to an absolute certainty, since proof to an absolute certainty is seldom possible.

In determining whether any fact in issue has been proved by a preponderance of the evidence, you may consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

INSTRUCTION NO. 7

The parties to these two consolidated actions are the plaintiffs, Gaye Lynn Schaffart and Jerry Peters, and defendant, ONEOK, Inc. Throughout these instructions, the plaintiffs shall be referred to as the plaintiffs or by their names. The defendant shall be referred to as the defendant or by ONEOK.

INSTRUCTION NO. 8

The parties have stipulated to the following facts, which you must accept as true:

1) ONEOK, Inc., is a diversified energy company headquartered in Tulsa, Oklahoma.

2) Gaye Lynn Schaffart began her employment with the predecessor company to ONEOK, Northern Border Partners, in 1982.

3) Schaffart worked in the Omaha office and rose to the position of Vice President of Special Projects.

4) Jerry Peters began his employment with the predecessor company to ONEOK, Northern Border Partners, in 1985.

5) Peters worked in the Omaha office and rose to the position of Chief Financial Officer and reported to Bill Cordes.

6) ONEOK purchased the general partner interest in Northern Border Partners and Northern Border Partners was renamed ONEOK Partners (the "Transaction").

7) Following the Transaction, ONEOK notified Schaffart and Peters that to remain employed they would have to relocate to Tulsa, Oklahoma.

8) On August 2, 2006, ONEOK offered Schaffart continued employment with ONEOK as Vice President Commercial, conditioned upon relocation to Tulsa.

9) Schaffart had four children in Omaha schools; her husband's brother had just passed away and her husband was managing the business in which he and his recently deceased

brother had been owners; and she attended to the needs of her 90-year-old mother, who lived in Omaha. Therefore, Schaffart determined she could not move her family to Tulsa.

10) Schaffart declined the offer on August 14, 2006.

11) Schaffart was forty-seven years old on December 31, 2006, her last day of employment with ONEOK.

12) Following the Transaction, Peters worked with ONEOK as Senior Vice President, Chief Accounting Officer, and Treasurer of ONEOK and reported to Jim Kneale, Executive Vice President and Chief Financial Officer of ONEOK.

13) Between September 1, 2006, and March 1, 2007, Peters commuted to Tulsa during the work week to perform his duties as Senior Vice President, Chief Accounting Officer, and Treasurer of ONEOK.

14) After commuting to Tulsa for a few months, Peters experienced marital problems, which culminated in the filing of a petition for divorce by his wife. The divorce included a custody battle, and Peters determined that in order to be a participating parent in his children's lives, he concluded that he would not relocate to Tulsa.

15) At the conclusion of the commuting arrangement, Peters worked for ONEOK in Omaha from March 1, 2007, through April 27, 2007, his last day of employment.

16) On April 27, 2007, Peters was forty-nine years old.

17) During plaintiffs' employment with ONEOK, ONEOK issued four stock incentive agreements (collectively referred to as the "Agreements"):

a) Performance Shares Award Agreement dated January 20, 2005;

b) Performance Unit Award Agreement dated January 19, 2006;

c) Restricted Stock Incentive Award Agreement dated January 20, 2005; and

d) Restricted Unit Award Agreement dated January 19, 2006.

18) ONEOK drafted the Agreements.

19) Plaintiffs asserted they were entitled to a pro rata distribution of stock pursuant to the qualifying circumstances contained in Paragraph 6(d) of the Agreements.

20) With respect to the Performance Share Award Agreement and Performance Unit Award Agreement, those qualifying circumstances are (a) retirement; (b) total disability; or (c) death.

21) With respect to the Restricted Stock Incentive Award Agreement and Restricted Unit Award Agreement, those qualifying circumstances are (a) "involuntary termination" other than termination for cause; (b) retirement; (c) total disability; or (d) death.

22) The Agreements executed in 2005 were issued pursuant to ONEOK's Long Term Incentive Plan. The Agreements

executed in 2006 were issued pursuant to ONEOK's Equity Compensation Plan.

23) David Roth, ONEOK's Senior Vice President of Administrative Services, made the determination to deny plaintiffs' claims for pro rata distribution under Paragraphs 6(d) of the Agreements.

24) Roth determined that Schaffart and Peters' separation of employment from ONEOK was voluntary and that they did not retire.

INSTRUCTION NO. 9

This case involves claims by Gaye Lynn Schaffart and Jerry Peters for breach of agreement arising from several agreements entered into between plaintiffs and defendant. Plaintiffs are former employees of defendant. During their employment, each plaintiff was issued four (4) separate long-term incentive agreements; namely the Performance Shares Award Agreements (Exhibits #1 and #5), Performance Unit Award Agreements (Exhibits #2 and #6), Restricted Stock Incentive Award Agreements (Exhibits #3 and #7), and Restricted Unit Award Agreements (Exhibits #4 and #8) (the "agreements"). The agreements provided for pro-rated awards of ONEOK stock if plaintiffs left ONEOK under certain qualifying circumstances. Plaintiffs claim they met the qualifying circumstances of "retirement" (pursuant to all four above-named agreements) and "involuntary termination" (pursuant to the Restricted Stock Incentive Award Agreements (Exhibits #3 and #7) and Restricted Unit Award Agreements (Exhibits #4 and #8)); and that David Roth, the ONEOK representative who denied plaintiffs' claims, did not have the authority to make that determination.

Defendant admits that it entered into the agreements with the plaintiffs, but claims that it did not breach the agreements. Defendant asserts David Roth did have the authority to make the determination concerning plaintiffs' rights to pro-rated awards of ONEOK stock, and that plaintiffs did not meet the

qualifying circumstances for pro-rated distributions under the agreements.

This is merely a summary of the parties' respective positions and does not constitute evidence in this case.

INSTRUCTION NO. 10

Before either plaintiff can recover against the defendant on his or her claims for breach of agreement, both plaintiffs must prove by a preponderance of the evidence, each of the following:

1) That each plaintiff and the defendant entered into the four agreements;

2) The terms of the agreements;

3) That the defendant breached the agreements in one or more of the ways claimed by plaintiffs; and

4) That this breach was the proximate cause of some damage to plaintiffs.

If either of the plaintiffs have proved by a preponderance of the evidence each and all of the above essential elements on one of its claims with respect to the defendant, your verdict will be for that plaintiff and against the defendant on that claim.

If the evidence upon any one of the above essential elements is either equally balanced or preponderates in favor of the defendant on one of plaintiffs' claims, then your verdict will be for the defendant on that claim.

I shall now examine these elements in greater detail as they relate to plaintiffs' claims.

INSTRUCTION NO. 11

The first element of a breach of agreement claim that plaintiffs must prove by a preponderance of the evidence is that plaintiffs and defendant entered into the four agreements. In this case, it is not disputed that the parties entered into the agreements listed in Instruction No. 9.

The second element of a breach of agreement claim that plaintiffs must prove by a preponderance of the evidence is the terms of the agreements. In this case, there is no dispute between the parties concerning the terms that make up the agreements. The terms of the agreements are to be given their plain and ordinary meaning as an ordinary, average or reasonable person would understand them. When a question exists as to the meaning of one of the agreements, that language should be construed against the party which prepared the agreement.

You shall consider that these two elements have been proved.

INSTRUCTION 12

The third element of a breach of agreement claim that plaintiffs must prove by a preponderance of the evidence is that defendant breached the agreements in one or more of the ways claimed by plaintiffs. In this case, each plaintiff has three breach of agreement claims concerning the agreements:

First, plaintiffs claim that David Roth did not have the authority to deny plaintiffs a pro rata distribution under the agreements. Plaintiffs claim that the Executive Compensation Committee of ONEOK alone had this authority, and it never properly granted Mr. Roth authority to make the denial or considered or reviewed Mr. Roth's decision to deny plaintiffs a distribution. Plaintiffs claim that such action by Mr. Roth and such inaction by the Executive Compensation Committee constituted a breach of the agreements.

Second, plaintiffs claim that the separations of their employment with ONEOK fell within the exceptions found in 6(d) of each of the agreements, which entitled them to a pro rata distribution of ONEOK stock upon their separations from ONEOK. Specifically, plaintiffs claim their separations constituted involuntary "retirements" under their agreements (Exhibits #1, #2, #3, #4, #5, #6, #7, and #8). Plaintiffs claim that defendant's failure to make a pro rata distribution under the agreements was a breach of the agreements.

Third, plaintiffs claim that the separations of their employment with ONEOK fell within the exceptions found in 6(d) of the Restricted Stock Incentive Award Agreements (Exhibits #3 and #7) and Restricted Unit Award Agreements (Exhibits #4 and #8), which entitled them to a pro rata distribution of ONEOK stock upon their separations from ONEOK. Specifically, plaintiffs claim their separations constituted "involuntary terminations" under these agreements. Plaintiffs claim that defendant's failure to make a pro rata distribution under these agreements was a breach of these agreements.

INSTRUCTION NO. 13

If you find plaintiffs have established any of their breach of agreement claims as to the defendant, then you must determine if the breach or breaches of agreement was or were the proximate cause of any damages claimed by either of the plaintiffs. The plaintiffs are required to show, by a preponderance of the evidence, that the defendant's breach was the proximate cause of their injuries.

A proximate cause is one that in a natural course, in a continuous sequence, unbroken by any intervening cause, produces the injury, and without which the injury would not have occurred.

Stated another way, before plaintiffs may recover damages for any injuries, they must show by a preponderance of the evidence that their injuries would not have come about were it not for defendant's breach or breaches.

If you find that any one of the elements of any one of plaintiffs' claims has not been established by a preponderance of the evidence as to the defendant, you must find for the defendant on that claim.

If you find either plaintiff has established all of the elements for any one of their claims by a preponderance of the evidence as to the defendant, you must find for that plaintiff against the defendant on that claim.

INSTRUCTION NO. 14

In the trial of this case and in this charge, I have in no way attempted to express my opinion as to who should prevail upon the issues submitted to you. You must not construe any statement, action, or ruling on my part in the trial of this case as an indication of any opinion on my part respecting the proper course of your verdict. During the course of a trial, I occasionally ask questions of a witness in order to bring out facts not fully covered in the testimony. Do not assume that I hold any opinion on the matters to which the questions related.

So regardless of what I may have chosen to say, I must admonish you that you are the sole judges of the facts, and your verdict must respond to your own conclusions from the evidence.

INSTRUCTION NO. 15

Upon your retirement to the jury room, first select one of your number to be foreperson to preside over your deliberations and who will sign the forms of verdict. You will then begin your study and deliberations of the case.

In arriving at your verdict, I admonish you that it must be unanimous. Short of unanimity, you cannot consider that you have reached any verdict.

If it becomes necessary during your deliberations to communicate with the Court, have your foreperson write and sign a note, and the Court Security Officer will deliver the note to me. Bear in mind you are not to reveal to the Court or to anyone else how the jury stands, numerically or otherwise, until you have reached a unanimous verdict.

Upon arriving at your verdict and completion of the forms of verdict by the foreperson, you will have concluded your task and you will notify the Judge.

As the Judge presiding over the trial, I shall be available throughout the remainder of the day and until your verdict is returned, and I shall receive it promptly upon its return.

If you do not arrive at your verdict during the present court day, you will continue deliberations until you do, with allowance of time for meals and with an intermission between 5 p.m. today and 9 a.m. tomorrow morning. During the time allotted

for meals and night's rest, you will be permitted to separate, but you should return promptly at the time set for continuation of your deliberations. During the periods of your separation, you should keep in mind the admonitions of the Court concerning your conduct while separated.

Verdict forms have been prepared and will be taken with you when you retire for your deliberations. The forms will be adequate for the expression of any verdict you may properly agree upon. Your foreperson only will date and sign the verdict.

Remember, at all times your verdict must be unanimous.