

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
EIGHTH DIVISION  
NO. 99-CI-3699

JAMES M. WELLS

PLAINTIFF

V.

INSTRUCTIONS TO JURY

COLUMBIA GAS OF KENTUCKY, INC., et. al.

DEFENDANTS

\* \* \* \* \*

THE JURY IS INSTRUCTED AS FOLLOWS:

GENERAL INSTRUCTION

Immediately upon retiring to the jury room, elect a foreperson. The jury is instructed to answer each of the questions contained in these instructions and to indicate your answers on the spaces provided with each question. To answer any question, nine or more of you must agree in order to make any of the determinations required by these instructions. If all twelve jurors agree to the answer to the Interrogatory, the answer need be signed only by the foreperson. Otherwise, the nine or more who agree must sign after the Instruction.

INSTRUCTION NO. 1

AGE DISCRIMINATION

Under the law of Kentucky, it is unlawful for an employer to discharge an employee from employment because of his or her age over 40. State whether you are satisfied from the evidence that James Wells' age was a substantial and motivating factor in Columbia Gas of Kentucky, Inc.'s decision to terminate his employment, but for which Columbia Gas of Kentucky, Inc. would not have made that decision.

(Check One)

Yes  No

FOREPERSON (IF UNANIMOUS) Juror No.

Valentin E. M... 471

Deborah Young 473

Candice Cox 472

Deborah Baker 958

Teresa Murphy 456

Michael P. Haberman 470

Harold C. Yates 445

Douglas C. Burns 989

Jim Starny 447

IF INSTRUCTION NO. 1 IS ANSWERED "NO", PLEASE RETURN TO THE COURTROOM.  
IF ANSWERED "YES", PLEASE PROCEED TO THE FOLLOWING INSTRUCTIONS.

INSTRUCTION NO. 2

If you have answered "Yes" under Instruction No. 1 you will determine from the evidence and award plaintiff James M. Wells a sum or sums of money that will fairly and reasonably compensate him for such of the following damages as you believe from the evidence he has sustained directly by reason of his discharge from employment by defendant, Columbia Gas of Kentucky, Inc.:

- (A) A sum of money equal to the gross compensation, including fringe benefits, that James M. Wells would have earned from his employment with defendant Columbia Gas during a period between the date of termination of his employment and this date, less any compensation, including fringe benefits, during that period of time that he has received from other employment or could have earned through the exercise of reasonable diligence to secure other employment:

\$ 90,377.00  
(not to exceed \$108,364.00)

- (B) A sum of money that will reasonably compensate James M. Wells for the embarrassment and humiliation or emotional distress and mental anguish he has suffered to this day:

\$ 25,000.00  
(not to exceed \$200,000.00)

FOREPERSON (IF UNANIMOUS) Juror No.

Valentin & Munt 471  
Deborah Young 473  
Candice Cox 472  
Deborah Baker 958  
Teresa Murphy 456  
Michael P. Haberman 470

Harold C. Yates 445  
Douglas E. Burg 989  
Jan Terry 441

### INSTRUCTION NO. 3

If you find for plaintiff James M. Wells and awarded him damages under Instruction No. 2 and if you are further satisfied from the evidence that in discriminating against James M. Wells defendant Columbia Gas acted in reckless disregard for his rights, you may in your discretion award punitive damages against defendant Columbia Gas in addition to the damages awarded under Instruction No. 2.

If you award punitive damages, you will state the amount separately from the sum or sums awarded under Instruction No. 2.

If you award punitive damages against defendant Columbia Gas, in determining the amount thereof you should consider the following factors:

- (a) The likelihood at the time of such misconduct by defendant that serious harm would arise from the misconduct;
- (b) The degree of defendant's awareness of that likelihood;
- (c) The profitability of the misconduct to defendant;
- (d) The duration of the misconduct and any concealment of it by defendant;

AND

- (e) The actions by defendant to remedy the misconduct once it became known to it.

Check one:

We do not award punitive damages against defencant Columbia Gas to James M. Wells.

OR

We award punitive damages against defendant Columbia Gas to James M. Wells in the sum of \$ 50,000.00.

FOREPERSON (IF UNANIMOUS) Juror No.

Valerie E. Smith 471  
Deborah Young 473  
Candice Cox 472  
Deborah Baker 958  
Teressa Murphy 456  
Michael P. Haberman 470

Howard C. Yates 445  
Douglas C. Brown 989  
John Stearns 447

PLEASE RETURN TO THE COURTROOM