



Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight you give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.
7. The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.
8. A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.
9. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.
10. Do not answer questions by drawing straws or by any method of chance.

11. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.
12. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."
13. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority. As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

**QUESTION NO. 1:**

Did Mrs. Kampmann fail to comply with the following provision of the Company Agreements?

In connection with any actual or potential business opportunity that is specifically within the Company's Line of Business that a Manager or Partner is considering pursuing through investment or active participation (a "Corporate Opportunity"), a Manager or Partner shall, promptly after first becoming aware of such actual or potential Corporate Opportunity, disclose the existence, nature and material facts related to the Corporate Opportunity in writing to the other Members or Partners.

The term Corporate Opportunity does not include any business ventures that Mrs. Kampmann owned or participated in prior to May 12, 2014, including, but not limited to, her interests in automobile dealerships, specifically Volvo of San Antonio, MINI of San Antonio, BMW of San Antonio, and Performance Toyota of Memphis.

It is your duty to interpret the following language of the Company Agreements:

"Line of Business' means ownership and management of automobile dealerships."

You are to determine if the parties intended the phrase "automobile dealerships" to include only the automobile franchise or also includes real estate purchased or developed for the purpose of leasing to an automobile franchise.

You must decide the meaning of this language by determining the intent of the parties at the time of the agreements. Consider all the facts surrounding the making of the agreements, the interpretation placed on the agreements by the parties, and the conduct of the parties.

You are instructed that you may not consider any evidence of a party's intentions with regard to the meaning of any agreement except for this specific phrase.

Answer "Yes" or No" as to each of the following:

- |  |            |
|--|------------|
| 1. Tessi 10.8 Acres and Improvements:        | <u>Yes</u> |
| 2. Pecan Parkway 8.0 Acres and Improvements: | <u>Yes</u> |
| 3. Bristol Green 4.0 Acres and Improvements: | <u>Yes</u> |

*Answer Question No. 2 only if you answered "Yes" to any part of Question No. 1. Otherwise do not answer the following question.*

**QUESTION NO. 2:**

Was Abigail Kampmann's failure to comply excused?

Failure to comply by Abigail Kampmann is excused if compliance is waived by Mark Smith. Waiver is an intentional surrender of a known right or intentional conduct inconsistent with claiming the right.

Failure to comply by Abigail Kampmann is excused by Mark Smith's previous failure to comply with a material obligation of the same agreement.

Failure to comply is excused if the agreement was made as the result of a mutual mistake.

A mutual mistake results from a mistake of fact common to both parties if both parties had the same misconception concerning the fact in question. A mistake by one party but not the other is not a mutual mistake. Unilateral mistake by one party, and knowledge of that mistake by the other party, is equivalent to mutual mistake.

A unilateral mistake can excuse a failure to comply when: (1) the mistake is of so great a consequence that to enforce the contract as made would be unconscionable; (2) the mistake relates to a material feature of the contract; (3) the mistake must have been made regardless of the exercise of ordinary care; and (4) the parties can be placed in status quo in the equity sense; i.e., rescission must not result in prejudice to the other party except for the loss of his bargain.

Failure to comply by Abigail Kampmann is excused if Abigail Kampmann was fraudulently induced to enter into the same agreement.

Fraudulent inducement to enter into an agreement occurs when –

1. a party makes a material misrepresentation, and
2. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
3. the misrepresentation is made with the intention to induce the other party, and
4. the other party justifiably relies on the misrepresentation and thereby enters into the agreement.

Failure to comply by Abigail Kampmann is excused if the following circumstances occurred:

1. Mark Smith

- a. by words or conduct made a false representation or concealed material facts, and
- b. with knowledge of the facts or with knowledge or information that would lead a reasonable person to discover the facts, and
- c. with the intention that Abigail Kampmann would rely on the false representation or concealment in acting or deciding not to act; and

2. Abigail Kampmann

- a. did not know and had no means of knowing the real facts and
- b. relied to her detriment on the false representation or concealment of material facts.

Failure to comply by Abigail Kampmann is excused if Mark Smith ratified her conduct. A party's conduct includes conduct of others that the party has ratified. Ratification may be express or implied.

Implied ratification occurs if a party, though he may have been unaware of unauthorized conduct taken on his behalf at the time it occurred, retains the benefits of the transaction involving the unauthorized conduct after he acquired full knowledge of the unauthorized conduct. Implied ratification results in the ratification of the entire transaction.

Failure to comply with an agreement is excused if a different performance was accepted as full satisfaction of performance of the original obligations of the agreement.

Answer "Yes" or "No" to each of the following:

1. **Tessi 10.8 Acres and Improvements:**

No

2. **Pecan Parkway 8.0 Acres and Improvements:**

No

3. **Bristol Green 4.0 Acres and Improvements:**

No

*If you answered "Yes" to any part of Question No. 1, then answer the following question for that part.*

**QUESTION NO. 3:**

By what date should Mark Smith, in the exercise of reasonable diligence, have discovered the breach of Abigail Kampmann that you found in Question No. 1?

- |  |                   |
|--|-------------------|
| 1. Tessi 10.8 Acres and Improvements:        | <u>April 2024</u> |
| 2. Pecan Parkway 8.0 Acres and Improvements: | <u>April 2024</u> |
| 3. Bristol Green 4.0 Acres and Improvements: | <u>April 2024</u> |

*If you answered "Yes" to any part of Question No. 1 and "No" to Question No. 2 then answer the following question for that part. Otherwise, do not answer the question and proceed to the next question.*

**QUESTION NO. 4:**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Mr. Smith for his damages, if any, incurred by Mr. Smith that resulted from Mrs. Kampmann's failure to comply found in Question No. 1?

Do not add any amount for interest on damages, if any. Consider the following elements of damages, if any, and none other. You shall not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any.

Mr. Smith's lost profits that were a natural, probable, and foreseeable consequence of Mrs. Kampmann's failure to comply.

Answer separately in dollars and cents for damages, if any:

- |  |                   |
|--|-------------------|
| 1. Tessi 10.8 Acres and Improvements:        | <u>19,125,236</u> |
| 2. Pecan Parkway 8.0 Acres and Improvements: | <u>1,128,031</u>  |
| 3. Bristol Green 4.0 Acres and Improvements: | <u>(29,823)</u>   |

**QUESTION NO. 5:**

Did Mrs. Kampmann fail to comply with her fiduciary duties to Mr. Smith?

As a managing member of Principal Auto Group, LLC, Mrs. Kampmann owed Mr. Smith fiduciary duties. To prove Mrs. Kampmann failed to comply with her fiduciary duties, Mr. Smith must show Kampmann failed to comply with the following:

In connection with any actual or potential business opportunity that is specifically within the Company's Line of Business that a Manager is considering pursuing through investment or active participation (a "Corporate Opportunity"), a Manager shall, promptly after first becoming aware of such actual or potential Corporate Opportunity, disclose the existence, nature and material facts related to the Corporate Opportunity in writing to the other Members.

The term Corporate Opportunity does not include any business ventures that Mrs. Kampmann owned or participated in prior to May 12, 2014, including, but not limited to, her interests in automobile dealerships, specifically Volvo of San Antonio, MINI of San Antonio, BMW of San Antonio, and Performance Toyota of Memphis.

Answer "Yes" or No."

- |  |            |
|--|------------|
| 1. Tessi 10.8 Acres and Improvements:        | <u>Yes</u> |
| 2. Pecan Parkway 8.0 Acres and Improvements: | <u>Yes</u> |
| 3. Bristol Green 4.0 Acres and Improvements: | <u>Yes</u> |

*Answer Question No. 6 only if you answered "Yes" to any part of Question No. 5. Otherwise, do not answer the following question.*

**QUESTION NO. 6:**

Was Abigail Kampmann's failure to comply excused?

Failure to comply by Abigail Kampmann is excused if compliance is waived by Mark Smith. Waiver is an intentional surrender of a known right or intentional conduct inconsistent with claiming the right.

Failure to comply by Abigail Kampmann is excused if the following circumstances occurred:

1. Mark Smith
  - a. by words or conduct made a false representation or concealed material facts, and
  - b. with knowledge of the facts or with knowledge or information that would lead a reasonable person to discover the facts, and
  - c. with the intention that Abigail Kampmann would rely on the false representation or concealment in acting or deciding not to act; and
  
2. Abigail Kampmann
  - a. did not know and had no means of knowing the real facts and
  - b. relied to her detriment on the false representation or concealment of material facts

Answer "Yes" or "No"

- |   |                       |
|---|-----------------------|
| <b>1. Tessi 10.8 Acres and Improvements:</b>        | <u>      No      </u> |
| <b>2. Pecan Parkway 8.0 Acres and Improvements:</b> | <u>      No      </u> |
| <b>3. Bristol Green 4.0 Acres and Improvements:</b> | <u>      No      </u> |

*If you answered "Yes" to any part of Question No. 5 and answered No to Question No. 6, then answer the following question for that part. Otherwise, do not answer the question.*

**QUESTION NO. 7:**

What sum of money, if paid now in cash, would fairly and reasonably compensate Mr. Smith for his damages, if any, that were proximately caused by such conduct?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Consider the following elements of damages, if any, and none other.

Answer separately in dollars and cents for damages, if any.

Mr. Smith's lost profits that were a natural, probable, and foreseeable consequence of Mrs. Kampmann's failure to comply.

1. **Tessi 10.8 Acres and Improvements:**
2. **Pecan Parkway 8.0 Acres and Improvements:**
3. **Bristol Green 4.0 Acres and Improvements:**

19,125,236
1,128,031
(29,823)

*If you answered "Yes" to any part of Question No. 5, then answer the following question for that part. Otherwise, do not answer the question.*

**QUESTION NO. 8:**

By what date should Mark Smith, in the exercise of reasonable diligence, have discovered the breach of Abigail Kampmann that you found in Question No. 5?

Answer with a date in the blanks below.

1. **Tessi 10.8 Acres and Improvements:**
2. **Pecan Parkway 8.0 Acres and Improvements:**
3. **Bristol Green 4.0 Acres and Improvements:**

April 2024  
April 2024  
April 2024

/

**PRESIDING JUROR:**

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

- a. have the complete charge read aloud if it will be helpful to your deliberations;
- b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
- c. give written questions or comments to the bailiff who will give them to the judge;
- d. write down the answers you agree on;
- e. get the signatures for the verdict certificate; and
- f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

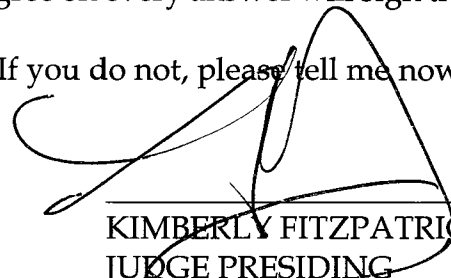
**INSTRUCTIONS FOR SIGNING THE VERDICT CERTIFICATE:**

1. Unless otherwise instructed, you may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.

2. If 10 jurors agree on every answer, those 10 jurors sign the verdict. If 11 jurors agree on every answer, those 11 jurors sign the verdict. If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.

  
KIMBERLY FITZPATRICK  
JUDGE PRESIDING  
DATE: Feb 2, 2020

**VERDICT CERTIFICATE**

Check one:

Our verdict is unanimous. All 12 of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 of us.

  
\_\_\_\_\_  
Signature of Presiding Juror

Christopher T. Hill  
\_\_\_\_\_  
Printed Name of Presiding Juror

\_\_\_\_ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

\_\_\_\_ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

Jurors' Signatures

Jurors' Printed Names

1. \_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

3. \_\_\_\_\_

\_\_\_\_\_

4. \_\_\_\_\_

\_\_\_\_\_

5. \_\_\_\_\_

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6. \_\_\_\_\_

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7. \_\_\_\_\_

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8. \_\_\_\_\_

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9. \_\_\_\_\_

\_\_\_\_\_

10. \_\_\_\_\_

\_\_\_\_\_

11. \_\_\_\_\_

\_\_\_\_\_