

FEB 01 2012

2:10 P.M.  
BARBARA DUNCAN DISTRICT CLERK  
BY: [Signature] DEPUTY

CAUSE NO. 2010-1020-CCC2

MARTIN RESOURCE MANAGEMENT §  
CORPORATION §  
*Plaintiff,* §

COUNTY COURT OF LAW NO. 2

VS. §

IN AND FOR

SCOTT MARTIN §  
*Defendant.* §

GREGG COUNTY, TEXAS

**JURY INSTRUCTIONS**

**LADIES AND GENTLEMEN OF THE JURY:**

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

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 to 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. 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.
7. 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.
8. Do not answer questions by drawing straws or by any method of chance.
9. 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.
10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."
11. Unless directed otherwise, the answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 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.

#### DEFINITIONS

1. "MRMC" means Plaintiff, Martin Resource Management Corporation.
2. "Scott Martin" means Defendant, Scott D, Martin.
3. "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.

### QUESTION 1

Did Scott Martin fail to comply with his fiduciary duty to MRMC?

Scott Martin was a director and an officer of MRMC and therefore Scott Martin owed a fiduciary duty to MRMC.

In answering this question, you are specifically instructed that you are not resolving the merits of the Harris County Lawsuit. The resolution of the claims asserted in the Harris County Lawsuit is for the court presiding over that case.

To prove Scott Martin failed to comply with his fiduciary duty, MRMC must show –

- (a) The occurrences in question were not fair and equitable to MRMC; or
- (b) Scott Martin did not make reasonable use of the confidence that MRMC placed in him; or
- (c) Scott Martin failed to act in the utmost good faith or exercise the most scrupulous honesty toward MRMC; or
- (d) Scott Martin placed his own interests before MRMC's, used the advantage of his position to gain a benefit for himself at the expense of MRMC, or placed himself in a position where his self-interest might conflict with his obligations as a fiduciary; or
- (e) Scott Martin failed to deal openly and to fully and fairly disclose all important information to MRMC concerning the occurrences in question.

Answer "Yes" or "No."

Answer: Yes

If you have answered "Yes" to Question 1, then answer Question 2. Otherwise, do not answer the following question.

### QUESTION 2

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

Do not add any amount for interest on damages, if any.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answers as to any other questions 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.

Answer separately in dollars and cents for 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.

- (a) Increased cost of financing.

Answer: \$1,794,000.00

- (b) Lost value in Cardinal Gas Storage.

Answer: \$ 0

- (c) Loss due to delay, if any, in Vacuum Tower Upgrade.

Answer: \$ 0

- (d) Loss due to sale of Rail Rack.

Answer: \$ 0

- (e) Loss of value of MMLP units.

Answer: \$ 0

Answer the following question only if you unanimously answered "Yes" to Question 1. Otherwise, do not answer the following question.

To answer "Yes" to the following question, your answer must be unanimous. You may answer "No" to the following question only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

### QUESTION 3

Do you find by clear and convincing evidence that the harm to MRMC resulted from malice?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means a specific intent by Scott Martin to cause substantial injury or harm to MRMC.

Answer "Yes" or "No."

Answer: No

Answer the following question only if you unanimously answered "Yes" to Question 3. Otherwise, do not answer the following question.

#### QUESTION 4

What sum of money, if any, if paid now in cash, should be assessed against Scott Martin and awarded to MRMC as exemplary damages, if any, for the conduct found in response to Question 3?

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answers as to any other questions 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.

Factors to consider in awarding exemplary damages, if any, are—

- (a) The nature of the wrong.
- (b) The character of the conduct involved.
- (c) The degree of culpability of Scott Martin.
- (d) The situation and sensibilities of the parties concerned.
- (e) The extent to which such conduct offends a public sense of justice and propriety.
- (f) The net worth of Scott Martin.

Answer in dollars and cents, if any.

Answer: \_\_\_\_\_


**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.

**Instructions for Signing the Verdict Certificate:**

1. 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 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 of you agree on other answers. But when you sign the verdict, only those 10 who agree on every answer will sign the verdict.

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JUDGE PRESIDING

**VERDICT CERTIFICATE AS TO QUESTIONS 1 AND 2**

We, the jury, have answered the above and foregoing questions 1 and 2 as herein indicated, and herewith return same into court as our Verdict.

**CHECK ONE:**

           **Our verdict is unanimous.** All Twelve (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

\_\_\_\_\_  
Printed Name of Presiding Juror

**Our verdict is not unanimous.** Ten (10) of us have agreed to each and every answer and have signed the certificate below.

Jurors' Signatures

Jurors' Printed Names

1. Daniel Flournoy
2. Marilyn Sorrells
3. Danyell Tatum
4. Laurie Acker
5. Ramona Husband
6. Danilla Mumford
7. Joni Mathis
8. Tammy Harris
9. Jason G. Jamerson
10. Kameron Jones
11. Roy metcalf

- Daniel Flournoy
- Marilyn Sorrells
- Danyell Tatum
- LAURIE ACKER
- Ramona Husband
- DANILLA MUMFORD
- Joni Mathis
- Tammy Harris
- JASON G. JAMERSON
- Kameron Jones
- Roy metcalf



**VERDICT CERTIFICATE AS TO QUESTIONS 1, 3 AND 4**

We, the jury, have answered the above and foregoing questions 1, 3 and 4 as herein indicated, and herewith return same into court as our Verdict.

           **Our verdict is unanimous.** I certify that the jury was unanimous in answering questions 1, 3 and 4. All Twelve (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

\_\_\_\_\_  
Printed Name of Presiding Juror