

FILED
Date 1-15-13
FIFTH DISTRICT COURT
WASHINGTON COUNTY
By JB

IN THE FIFTH JUDICIAL DISTRICT IN AND FOR
WASHINGTON COUNTY, STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff, : **JURY INSTRUCTIONS**
vs. :
AARON DAVID TRENT NEEDHAM, : Case No. 101500067FS
Defendant. : Judge A. Lynn Payne

MEMBERS OF THE JURY, you now have all the evidence. Three things remain to be done:

First: I will give you additional instructions that you will follow in deciding this case;

Second: the lawyers will give their closing arguments. The prosecutor will go first, then the defense. Because the prosecution has the burden of proof, the prosecutor may give a rebuttal argument.

Finally, you will go to the jury room to discuss and decide the case.

INSTRUCTION NO. 1: You have two main duties as jurors:

The first is to decide from the evidence what the facts are. Deciding what the facts are is your job, not mine.

The second duty is to take the law I give you in the instructions, apply it to the facts, and decide if the prosecution has proved the defendant guilty beyond a reasonable doubt.

You are bound by your oath to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions I gave you before trial, any instructions I may have given you during the trial, and these instructions. All the instructions are important, and you should consider them as a whole. The order in which the instructions are given does not mean that some instructions are more important than others. Whether any particular instruction applies may depend upon what you decide are the true facts of the case. If an instruction applies only to facts or circumstances you find do not exist, you may disregard that instruction.

Perform your duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way. You must also not let

yourselves be influenced by public opinion.

INSTRUCTION NO. 2: When the lawyers give their closing arguments, keep in mind that they are advocating their views of the case. What they say during their closing arguments is not evidence. If the lawyers say anything about the evidence that conflicts with what you remember, you are to rely on your memory of the evidence. If they say anything about the law that conflicts with these instructions, you are to rely on these instructions.

INSTRUCTION NO. 3: During the trial I have made certain rulings. I made those rulings based on the law, and not because I favor one side or the other.

However, if I sustained an objection, if I did not accept evidence offered by one side or the other, or if I ordered that certain testimony be stricken, then you must not consider those things in reaching your verdict.

It has never been my intention to give any hint that you should return one verdict or another in this case. Please understand that I do not wish in any way to influence your verdict. It would be improper for me to do so. Deciding a proper verdict is exclusively your job. I cannot participate in

that decision in any way. Please disregard anything that I may have said or done if it made you think that I preferred one verdict over another, that I believed one witness over another, or that I considered any piece of evidence more important than another.

You are the exclusive judges of the facts and the evidence. It is your duty to render a just verdict based upon the facts and the evidence.

INSTRUCTION NO. 4: As the judge, I am neutral. If I have said or done anything that makes you think I favor one side or the other, that was not my intention. Do not interpret anything I have done as indicating that I have any particular view of the evidence or the decision you should reach.

INSTRUCTION NO. 5: You must base your decision only on the evidence that you saw and heard here in court.

Evidence includes: what the witnesses said while they were testifying under oath; any exhibits admitted into evidence; and any stipulations entered into between the Parties. Nothing else is evidence. The lawyers statements and arguments are not evidence. Their objections are not evidence. My legal rulings and comments, if any, are not evidence.

In reaching a verdict, consider all the evidence as I have defined it here, and nothing else. You may also draw all reasonable inferences from that evidence.

INSTRUCTION NO. 6: Facts may be proved by direct or circumstantial evidence. The law does not give greater weight to one type of evidence over the other.

Direct evidence can prove a fact by itself. It usually comes from a witness who perceived firsthand the fact in question. For example, if a witness testified he looked outside and saw it was raining, that would be direct evidence that it had rained.

Circumstantial evidence is indirect evidence. It usually comes from a witness who perceived a set of related events, but not the fact in question. However, based on that testimony someone could conclude that the fact in question had occurred.

For example, if a witness testified that she looked outside and saw that the ground was wet and people were closing their umbrellas, that would be circumstantial evidence that it had rained.

Before you can find the defendant guilty of any charge, there must be enough evidence—direct, circumstantial, or some of both—to convince you of the defendant's guilt beyond a reasonable

doubt. It is up to you to decide.

INSTRUCTION NO. 7: In deciding this case you will need to decide how believable each witness was. Use your judgment and common sense. Let me suggest a few things to think about as you weigh each witness's testimony:

- How good was the witness's opportunity to see, hear, or otherwise observe what the witness testified about?
- Does the witness have something to gain or lose from this case?
- Does the witness have any connection to the people involved in this case?
- Does the witness have any reason to lie or slant the testimony?
- Was the witness's testimony consistent over time? If not, is there a good reason for the inconsistency? If the witness was inconsistent, was it about something important or unimportant?
- How believable was the witness's testimony in light of other evidence presented at trial?
- How believable was the witness's testimony in light of human experience?

● Was there anything about the way the witness testified that made the testimony more or less believable?

In deciding whether or not to believe a witness, you may also consider anything else you think is important.

You do not have to believe everything that a witness said. You may believe part and disbelieve the rest. On the other hand, if you are convinced that a witness lied, you may disbelieve anything the witness said. In other words, you may believe all, part, or none of a witness's testimony. You may believe many witnesses against one or one witness against many.

In deciding whether a witness testified truthfully, remember that no one's memory is perfect. Anyone can make an honest mistake. Honest people may remember the same event differently.

INSTRUCTION NO. 8: The defendant testified at trial. Another instruction mentions some things for you to think about in weighing testimony. Consider those same things in weighing the defendant's testimony. Don't reject the defendant's testimony merely because he is accused of a crime.

INSTRUCTION NO. 9: Remember, the fact that the defendant is charged with a crime is not evidence of guilt. The law presumes that the defendant is not guilty of the crime(s) charged. This

presumption persists unless the prosecution's evidence convinces you beyond a reasonable doubt that the defendant is guilty.

INSTRUCTION NO. 10: As I have instructed you before, proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If the evidence leaves you firmly convinced that the defendant is guilty of the crime charged, you must find the defendant "guilty." On the other hand, if there is a real possibility that he is not guilty, you must give the defendant the benefit of the doubt and return a verdict of "not guilty."

INSTRUCTION NO. 11: The law requires that the prosecutor prove beyond a reasonable doubt that the defendant acted with a particular mental state.

Ordinarily, there is no way that a defendant's mental state can be proved directly, because no one can tell what another person is thinking.

A defendant's mental state can be proved indirectly from the surrounding facts and circumstances. This includes things like what the defendant said, what the defendant did, and any other

evidence that shows what was in the defendant's mind.

INSTRUCTION NO. 12: A defendant's "mental state" is not the same as "motive." Motive is why a person does something. Motive is not an element of the crime(s) charged in this case. As a result, the prosecutor does not have to prove why the defendant acted (or failed to act).

However, a motive or lack of motive may help you determine if the defendant did what he is charged with doing. It may also help you determine what his mental state was at the time.

INSTRUCTION NO. 13: In making your decision, do not consider what punishment could result from a verdict of guilty. Your duty is to decide if the defendant is guilty beyond a reasonable doubt. Punishment is not relevant to whether the defendant is guilty or not guilty.

INSTRUCTION NO. 14: In the jury room, discuss the evidence and speak your minds with each other. Open discussion should help you reach a unanimous agreement on a verdict. Listen carefully and respectfully to each other's views and keep an open mind about what others have to say. I recommend that you not commit yourselves to a particular verdict before discussing all the evidence.

Try to reach unanimous agreement, but only if you can do so honestly and in good conscience. If there is a difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you become convinced that your position is wrong. On the other hand, do not give up your honestly held views about the evidence simply to agree on a verdict, to give in to pressure from other jurors, or just to get the case over with. In the end, your vote must be your own.

Because this is a criminal case, every single juror must agree with the verdict before the defendant can be found "guilty" or "not guilty." In reaching your verdict you may not use methods of chance, such as drawing straws or flipping a coin. Rather, the verdict must reflect your individual, careful, and conscientious judgment as to whether the evidence presented by the prosecutor proved each charge beyond a reasonable doubt.

INSTRUCTION NO. 15: The next instructions numbered 16 through 36 are specifically tailored for the charges in this case:

INSTRUCTION NO. 14

The defendant, AARON NEEDHAM, is charged in Count 1 with COMMUNICATIONS FRAUD, alleged to have occurred in or about April 2005 as to Lot 26, LaScala, Mesquite, NV. In order to find the defendant guilty, you must find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant;
2. Having devised a scheme or artifice to obtain from another (BACT Limited Partnership) money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions,
3. Did communicate directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice;
4. The pretenses, representations, promises, or material omissions made or omitted by the defendant were made or omitted intentionally, knowingly, or with a reckless disregard for the truth; and
5. The total value of all property, money, or things the defendant obtained or sought to obtain by the scheme or artifice to defraud exceeded \$5,000.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven

beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY of Communications Fraud, as charged in Count 1.

INSTRUCTION NO. 17

The defendant, AARON NEEDHAM, is charged in Count 2 with COMMUNICATIONS FRAUD, alleged to have occurred in or about May 2005, as to Lot 26, LaScala, Mesquite, NV. In order to find the defendant guilty, you must find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant;
2. Having devised a scheme or artifice to obtain from another (BACT Limited Partnership) money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions,
3. Did communicate directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice;
4. The pretenses, representations, promises, or material omissions made or omitted by the defendant were made or omitted intentionally, knowingly, or with a reckless disregard for the truth; and
5. The total value of all property, money, or things the defendant obtained or sought to obtain by the scheme or artifice to defraud exceeded \$5,000.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven

beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY of Communications Fraud, as charged in Count 2.

INSTRUCTION NO. 18

The defendant, AARON NEEDHAM, is charged in Count 3 with COMMUNICATIONS FRAUD, alleged to have occurred in or about June 2005, as to Lot 26, LaScala, Mesquite, NV. In order to find the defendant guilty, you must find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant;
2. Having devised a scheme or artifice to obtain from another (BACT Limited Partnership) money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions,
3. Did communicate directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice;
4. The pretenses, representations, promises, or material omissions made or omitted by the defendant were made or omitted intentionally, knowingly, or with a reckless disregard for the truth; and
5. The total value of all property, money, or things the defendant obtained or sought to obtain by the scheme or artifice to defraud exceeded \$5,000.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven

beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY of Communications Fraud, as charged in Count 3.

INSTRUCTION NO. 19

The defendant, AARON NEEDHAM, is charged in Count 4 with COMMUNICATIONS FRAUD, alleged to have occurred in or about June 2005, as to Lot 26, LaScala, Mesquite, NV. In order to find the defendant guilty, you must find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant;
2. Having devised a scheme or artifice to obtain from another (BACT Limited Partnership) money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions,
3. Did communicate directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice;
4. The pretenses, representations, promises, or material omissions made or omitted by the defendant were made or omitted intentionally, knowingly, or with a reckless disregard for the truth; and
5. The total value of all property, money, or things the defendant obtained or sought to obtain by the scheme or artifice to defraud exceeded \$5,000.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven

beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY of Communications Fraud, as charged in Count 4.

INSTRUCTION NO. 20

The defendant, AARON NEEDHAM, is charged in Count 5 with COMMUNICATIONS FRAUD, alleged to have occurred in or about April 2005, as to Lot 27, LaScala, Mesquite, NV. In order to find the defendant guilty, you must find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant;
2. Having devised a scheme or artifice to obtain from another (BACT Limited Partnership) money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions,
3. Did communicate directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice;
4. The pretenses, representations, promises, or material omissions made or omitted by the defendant were made or omitted intentionally, knowingly, or with a reckless disregard for the truth; and
5. The total value of all property, money, or things the defendant obtained or sought to obtain by the scheme or artifice to defraud exceeded \$5,000.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven

beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY of Communications Fraud, as charged in Count 5.

INSTRUCTION NO. 21

The defendant, AARON NEEDHAM, is charged in Count 6 with COMMUNICATIONS FRAUD, alleged to have occurred in or about May 2005, as to Lot 27 LaScala, Mesquite, NV. In order to find the defendant guilty, you must find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant;
2. Having devised a scheme or artifice to obtain from another (BACT Limited Partnership) money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions,
3. Did communicate directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice;
4. The pretenses, representations, promises, or material omissions made or omitted by the defendant were made or omitted intentionally, knowingly, or with a reckless disregard for the truth; and
5. The total value of all property, money, or things the defendant obtained or sought to obtain by the scheme or artifice to defraud exceeded \$5,000.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven

beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY of Communications Fraud, as charged in Count 6.

INSTRUCTION NO. 22

The defendant, AARON NEEDHAM, is charged in Count 7 with COMMUNICATIONS FRAUD, alleged to have occurred in or about June 2005, as to Lot 27 LaScala, Mesquite, NV. In order to find the defendant guilty, you must find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant;
2. Having devised a scheme or artifice to obtain from another (BACT Limited Partnership) money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions,
3. Did communicate directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice;
4. The pretenses, representations, promises, or material omissions made or omitted by the defendant were made or omitted intentionally, knowingly, or with a reckless disregard for the truth; and
5. The total value of all property, money, or things the defendant obtained or sought to obtain by the scheme or artifice to defraud exceeded \$5,000.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven

beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY of Communications Fraud, as charged in Count 7.

INSTRUCTION NO. 23

The defendant, AARON NEEDHAM, is charged in Count 8 with COMMUNICATIONS FRAUD, alleged to have occurred in or about June 2005, as to Lot 27 LaScala, Mesquite, NV. In order to find the defendant guilty, you must find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant;
2. Having devised a scheme or artifice to obtain from another (BACT Limited Partnership) money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions,

3. Did communicate directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice;

4. The pretenses, representations, promises, or material omissions made or omitted by the defendant were made or omitted intentionally, knowingly, or with a reckless disregard for the truth; and

5. The total value of all property, money, or things the defendant obtained or sought to obtain by the scheme or artifice to defraud exceeded \$5,000.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven

beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY of Communications Fraud, as charged in Count 8.

INSTRUCTION NO. 24

Before you can find the defendant, AARON NEEDHAM, guilty of the crime of PATTERN OF UNLAWFUL ACTIVITY as alleged in Count 9 of the Criminal Information, you must find from the evidence all of the following elements of the crime:

1. From on or about November 2004, in the State of Utah;
2. The defendant;
3. Intentionally, knowingly or recklessly;
4. Through a pattern of unlawful activity;
 - a. in which the defendant participated as a principal;
 - i. received any proceeds directly or indirectly;AND
 - ii. used or invested, directly or indirectly, any part of the income or proceeds of the income, which he received from the specified unlawful activity to acquire, establish or operate an enterprise; OR,
 - b. acquired or maintained, directly or indirectly, any interest in or control of an enterprise; OR,
 - c. was employed by or associated with any enterprise and conducted or participated, directly or indirectly, in the conducting of that enterprise's affairs;

If you believe that the evidence establishes each and every one of the above elements of the crime, beyond a reasonable doubt, it shall be your duty to find the Defendant guilty as to Count 9 of the Criminal Information. On the other hand, if the evidence has failed to establish one or more of the above elements of the offense charged, beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count 9.

INSTRUCTION NO. 25

In Count 9 of the Criminal Information, the State has alleged that the defendant AARON NEEDHAM, engaged in a pattern of unlawful activity. The unlawful activity which constitutes the pattern includes the activity alleged in counts 1 through 8 involving Lots 26 and 27 of LaScala, Mesquite, Nevada. In addition to the activity alleged in counts 1 through 8 for Lots 26 and 27, the State alleges that the unlawful activity includes the construction draws submitted to the BACT Limited Partnership, LLC, by the defendant in connection with Lots 125 and 131 of the White Mesa subdivision, Mesquite, Nevada; Lot 78B Bloomington Ranches, St. George, Utah; and Lots 28 and 29, River Hollow, St. George, Utah. However, before you can consider these additional construction draws as part of the pattern of unlawful activity, you must find from the evidence that the construction draws constituted an act of COMMUNICATIONS FRAUD.

Therefore, before you can consider any of the construction draws submitted by the defendant as part of the pattern of unlawful activity, you must first find from the evidence all of the following elements:

1. That commencing on or about November 2004 and continuing through June 2005, in the State of Utah, Aaron Needham;

2. Having devised a scheme or artifice to defraud The BACT Limited Partnership, LLC., (for Lots 125 and 131 of White Mesa, and/or Lot 78B of Bloomington Ranches, and/or Lots 26 and 27 of LaScala, and/or Lots 28 and 29 of River Hollow), of money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions;

3. Did communicate directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice;

4. The pretenses, representations, promises, or material omissions made or omitted by the defendant were made or omitted intentionally, knowingly, or with a reckless disregard for the truth; and

5. The total value of all property, money, or things the defendant obtained or sought to obtain by the scheme or artifice to defraud exceeded \$5,000.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY of Communications Fraud, as charged in Count 9.

INSTRUCTION NO. 26

You are instructed that the following words have the following meanings:

1. "scheme" means an overall design to defraud one or many by means of a common plan or technique.

2. "artifice" means an artful stratagem or a trick.

3. "communicate" means to bestow, convey, make known, recount, impart; to give by way of information; to talk over; or to transmit information.

4. A "material" fact is a fact that a reasonable person in similar circumstances would deem important in making a particular decision.

5. "means of communication" includes but is not limited to the use of the mail, telephone, telegraph, radio, television, newspaper, computer, and spoken and written communication.

INSTRUCTION NO. 27

In order for an omission to be "material" it must be a matter which:

(a) a reasonable person would attach importance to its existence or nonexistence in determining his or her choice of action in the transaction in question; or

(b) the person making the omission knows or has reason to know that the person regards or is likely to regard the matter as important in determining his or her choice of action.

INSTRUCTION NO. 28

Material misrepresentations or omissions are those which might affect a reasonable person's actions in a situation.

INSTRUCTION 29

If you determine from the evidence that a pretense, representation, promise or material omission was made or omitted by the defendant, in order to find the defendant guilty of communications fraud, you must determine that it was made or omitted:

- a) intentionally; or,
- b) knowingly; or,
- c) with a reckless disregard for the truth.

It is sufficient to convict that you find that the defendant had any one of the three mental states listed above.

A person acts "intentionally" when his conscious objective is to engage in the conduct or cause the result.

A person acts "knowingly" with respect to his conduct or circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances.

A person acts "knowingly" with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

A person acts "with a reckless disregard for the truth" when he entertains serious doubts as to the truth or veracity of the fact represented or omitted, or has obvious reason to question

the truth of such a fact, but makes the representation or omission anyway.

INSTRUCTION NO. 30

You are instructed that while a number of misrepresentations and omissions are alleged as the basis for the charges of communications fraud, it is not incumbent upon the State to prove each and every one of them. It is enough that the State prove to your satisfaction and beyond a reasonable doubt that at least one false pretense, representation, promise or a material omission was made in connection with that count.

INSTRUCTION NO. 31

The first element for the charge of a PATTERN OF UNLAWFUL ACTIVITY, requires that the State must prove that an "enterprise" existed. An enterprise is any individual, sole proprietorship, partnership, corporation, business trust, or other entity, including illegal and legal entities.

If you find beyond a reasonable doubt that Aaron Needham and/or DT Development comprised an enterprise and was an ongoing organization, and that it functioned as a continuing unit, then you can find that an enterprise existed.

INSTRUCTION NO. 32

You are instructed that under the laws of the State of Utah, the following words have the following meanings:

1. "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illegal as well as legal entities.

2 "Pattern of Unlawful Activity" means engaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. The most recent act constituting part of a pattern of unlawful activity as defined shall have occurred within 5 years of the commission of the next preceding act alleged as part of the pattern.

3. "Person" includes any individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.

4. "Entity" includes a domestic and foreign corporation, a nonprofit corporation, a limited liability company, a profit or non-profit unincorporated association, a business trust, an estate, a partnership, a trust, two or more persons having a joint or common economic interest.

5. "Unlawful Activity" means to directly engage in conduct or to solicit, request, command, encourage or intentionally aid another person to engage in conduct which would constitute an act prohibited by the Utah Communications Fraud statute, as previously defined, or to attempt or conspire to engage in an act which would constitute that offense, regardless of whether the act is in fact charged or indicted by any authority.

INSTRUCTION NO. 33

You are instructed that under the laws of the State of Utah a person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or on behalf of a company, corporation or association to the same extent as if such conduct were performed in his own name or behalf.

INSTRUCTION NO. 34

The State need not prove that the person and/or business entity lost money. The provisions of the Communications Fraud statute can be violated even if a person and/or business entity remains unharmed.

INSTRUCTION NO. 35

The State need not prove the defendant intended to permanently deprive any person and/or business entity of property, money or thing of value.

INSTRUCTION NO. 36

You are instructed that it is not a defense to a charge of Communications Fraud that the parties offered to settle the dispute. Under Utah Law, the offer of a civil remedy between a Defendant and a Victim does not excuse the criminal conduct or affect the criminal proceedings as the Victim is not a party to the criminal action. The only parties in a criminal action are the State of Utah and the Defendant.

INSTRUCTION NO. 37

You may take only the following items into the Jury Room:
the jury instructions, the exhibits admitted into evidence, your
notes, and the verdict form.

INSTRUCTION NO. 38

Among the first things you should do when you go to the jury room to deliberate is to appoint someone to serve as the jury foreperson. The foreperson should not dominate the jury's discussion, but rather should facilitate the discussion of the evidence and make sure that all members of the jury get the chance to speak. The foreperson's opinions should be given the same weight as those of other members of the jury. Once the jury has reached a verdict, the foreperson is responsible for filling out and signing the verdict form(s) on behalf of the entire jury.

For each offense, the verdict form will have two blanks—one for "guilty" and the other for "not guilty." The foreperson will fill in the appropriate blank to reflect the jury's unanimous decision. In filling out the form, the foreperson needs to make sure that only one blank is marked for each charge.

DATED THIS 15 DAY OF January, 2013.

A. L. Pay
DISTRICT COURT JUDGE