

INSTRUCTION NO. 1

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal sympathy, bias, prejudices or emotions.

INSTRUCTION NO. 2

Whenever a party must prove something they must do so by the preponderance of the evidence. Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 3

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 4

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 4A

You have heard evidence claiming a party made statements before this trial while not under oath. If you find such a statement was made, you may regard the statement as evidence in this case the same as if the party had made it under oath during the trial. If you find such a statement was made and was inconsistent with the party's testimony during the trial you may also use the statement as a basis for disregarding all or any part of the party's testimony during the trial but you are not required to do so. You should not disregard the party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason

INSTRUCTION NO. 5

Plaintiffs claims that defendant breached their contract. To prove this claim, plaintiffs must prove all of the following propositions:

1. The existence of a contract. There is no dispute as to this element.
2. The terms of the contract.
3. Plaintiffs did what the contract requires.
4. Defendant breached the contract.
5. The amount of any damage defendant caused.

If plaintiffs have failed to prove all of these propositions, they are not entitled to damages.

INSTRUCTION NO. 6

In determining the terms of the contract you may consider the following:

1. The intent of the parties along with a reasonable application of the surrounding circumstances.
2. The intent expressed in the language used prevails over any secret intention of either party.
3. The intent may be shown by the practical construction of a contract by the parties and by the surrounding circumstances.
4. You must attempt to give meaning to all language of a contract. Because an agreement is to be interpreted as a whole, assume that all of the language is necessary. An interpretation which gives a reasonable, effective meaning to all terms is preferred to an interpretation which leaves a part of the contract unreasonable or meaningless.
5. The meaning of a contract is the interpretation a reasonable person would give it if they were acquainted with the circumstances both before and at the time the contract was made.
6. Ambiguous language in a written contract is interpreted against the party who selected it.
7. Where general and specific terms in the contract refer to the same subject, the specific terms control.

INSTRUCTION NO. 7

A breach of the contract occurs when a party fails to perform a term of the contract.

INSTRUCTION NO. 8

The measure of damages for breach of a contract is an amount that would place plaintiff or defendant in as good a position as it would have enjoyed if the contract had been performed. The damages you award for breach of contract must be foreseeable or have been reasonably foreseen at the time the parties entered into the contract.

INSTRUCTION NO. 9

In order for plaintiffs to prevail on their claim of breach of implied warranty of fitness for particular purpose, plaintiffs must prove all of the following propositions:

1. At the time of the sale defendant had reason to know the particular purpose of the product or service.
2. Defendant had reason to know plaintiffs were relying on defendant's skill or judgment to furnish his material and service.
3. Plaintiffs relied upon defendant's skill or judgment.
4. The exterior and gutter system was not fit for the particular purpose.
5. The failure of the product or service to fit the particular purpose was a cause of the plaintiff's damage.
6. The amount of damage.

If plaintiffs failed to prove all of these propositions, plaintiffs are not entitled to damages. If plaintiffs have proved all of these propositions, plaintiffs are entitled to damages in some amount.

INSTRUCTION NO. 10

It is not enough that the buyer relied upon the general reputation or integrity of the seller. It must appear the seller had special skill or judgment regarding the product and its intended use, and the buyer relied upon the seller's special skills or judgment. The buyer's reliance on the seller's skill or judgment need not be a total reliance. The buyer may rely partly on their own judgment and partly on the seller's skill and judgment.

INSTRUCTION NO. 11

When a contractor agrees to build, install or perform work, there is an implied agreement that the building, installation or work performed will be sufficient for the particular purpose desired or to accomplish a certain result.

INSTRUCTION NO. 12

Plaintiffs must prove all of the following elements regarding their claim of consumer fraud:

1. Defendant engaged in an unfair practice or deception, or the concealment or omission of a material fact;
2. Defendant knew or reasonably should have known the act or practice was an unfair practice or deception, or the concealment or omission of a material fact;
3. Defendant did so with the intent that others rely upon the unfair practice or deception, or the concealment or omission in connection with the advertisement, sale, or lease of consumer merchandise;
4. Defendant's act or actions caused plaintiff damages.

If plaintiff proved all four elements, you shall find in favor of plaintiffs on their claim of consumer fraud. If plaintiff failed to prove all of elements, you shall find for defendant on this claim.

INSTRUCTION NO. 13

"Deception" means an act or practice that is likely to mislead a substantial number of consumers as to a material fact or facts.

INSTRUCTION NO. 14

“Unfair practice” means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

INSTRUCTION NO. 15

Punitive damages may be awarded if plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence defendant’s conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to plaintiff.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage defendant and others from like conduct in the future.

There is no exact rule to determine the amount of punitive damages, if any, you should award. In fixing the amount of punitive damages, you may consider all the evidence including:

1. The nature of defendant’s conduct.
2. The amount of punitive damages which will punish and discourage like conduct by the defendant in view of its financial condition.
3. Plaintiff’s actual damages.

You cannot exceed three times the amount you awarded for actual damages.

INSTRUCTION NO. 16

Upon retiring you shall select a foreperson. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. 17

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

INSTRUCTION NO. 18

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by carefully re-reading them. If, however, any of you feel it necessary to ask a question, you must do so in writing and deliver the question to the court attendant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes time and deliberation before I can reply. The foreperson shall read my responses to the jury. Keep the written question and response and return it to the court with the verdict.

My judicial specialist is the same position as I am. She will be taking an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put her on the spot by asking her any questions. You should direct your questions to the court and not the judicial specialist.

INSTRUCTION NO. 19

I am giving you one verdict form. During the first three hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict must be signed by your foreperson.

After deliberating for three hours from 3:55 o'clock P.m. excluding meals or recesses outside your jury room, then it is necessary that only five of you agree upon the verdict. In that case, the verdict must be signed by all five jurors who agree.

When you have agreed upon the verdict and appropriately signed it, tell the judicial specialist.

Dated this 1st day of December, 2025.



Jeffrey D. Farrell
District Judge, 5th Judicial District

Question No. 5: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of defendant constituted willful and wanton disregard for the rights or safety of another?

_____ Yes

X No

(If your answer to Question No. 5 is "No" do not answer Question No. 6).

Question No. 6: If you found in favor of plaintiffs on their consumer fraud claim, what amount of punitive damages, if any, do you award against defendant ~~X~~ (you cannot exceed three times the amount you awarded for actual damages on Question No. 4)?

ANSWER: \$ _____

Sign this verdict form.

Donald Fish
FOREPERSON*

* To be signed only if verdict is unanimous

Juror** _____

Juror** _____

Juror** _____

Juror** _____

Juror** _____

** To be signed by the jurors agreeing thereto after three or more hours of deliberation.

were the gutters that Larry Thomas
installed "covered gutters" i.e. like longwood

12/1/25 Don Frisby
Don Frisby
4:27 pm

Members of the jury:

Thank you for your question. You have received all of the evidence in this case. The court cannot answer specific questions about matters in evidence. Please continue with your deliberations based on the evidence that was presented at trial.

Sincerely,



Jeffrey D. Farrell
District Judge
December 1, 2025 5:00 p.m.

FILED
POLK COUNTY, IA.
2025 DEC -2 AM 10: 09
CLERK DISTRICT COURTI