

## IN THE IOWA DISTRICT COURT IN AND FOR IOWA COUNTY

GARY BOLAND,  
Plaintiff,

vs.

FARMERS COOPERATIVE  
ASSOCIATION OF KEOTA, IA,  
Defendant.

Case No. LACV023763

**JURY INSTRUCTIONS**

FILED  
IOWA CO. IOWA  
JAN 22 PM 4:10  
CLERK OF DISTRICT COURT

**Statement of the Issues**

Members of the Jury:

The parties to this lawsuit are the Plaintiff, Gray Boland ("Boland"), and the Defendant, the Farmers Cooperative Association of Keota, Iowa (the "Coop").

Boland claims the Coop breached an alleged oral contract. Boland alleges that in 2007, the Coop offered him the right of first refusal to purchase his pro rata portion of the Coop's Skyline shares at such time in the future when the Coop decided to sell, in exchange for Boland's promise to leave his stable pig source and get involved with the Skyline Project and to purchase all premix and soybean meal exclusively from the Coop. Boland claims the Coop breached this alleged contract when the Coop sold the shares in 2011 without providing him with the right of first refusal. Boland seeks to recover damages he claims he sustained as a result of the Coop's alleged breach.

The Coop denies that it had any oral contract with Boland.

Do not consider this summary as proof of any claim.

Decide the facts from the evidence and apply the law, which I will now give you.

### 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.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases.

The law demands that you return a just verdict based solely on the evidence, your reason and common sense, and these instructions.

As jurors, your sole duty is to find the truth and do justice.

### INSTRUCTION NO. 2

Unless otherwise specifically stated, 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

During this trial, you have heard the word “interrogatory”. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

#### INSTRUCTION NO. 5

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. 6

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

#### INSTRUCTION NO. 7

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact

assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion

#### INSTRUCTION NO. 8

You have heard evidence claiming certain witnesses made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

#### INSTRUCTION NO. 9

You have heard evidence claiming certain witnesses made statements before this trial while under oath which were inconsistent with what the witnesses said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe the witness. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the trial testimony if other evidence you believe supports it or if you believe it for any other reason.

INSTRUCTION NO. 10

You have heard evidence claiming Boland and representatives of the Coop made statements before this trial while under oath and 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 it had made it under oath during the trial.

If you find such a statement was made and was inconsistent with Boland's or the Coop's representatives testimony during the trial, you may also use the statement as a basis for disregarding all or any part of the testimony during the trial but you are not required to do so.

You should not disregard testimony given during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 11

The fact that a plaintiff or defendant is a corporation should not affect your decision. All person are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 12

To recover for breach of contract, Boland must prove all of the following propositions by a preponderance of the evidence:

1. The parties were capable of contracting. The parties agree that they were capable of contracting.

2. The existence of a contract.
3. The consideration.
4. The terms of the contract.
5. Boland has done what the contract requires.
6. The Coop has breached the contract.
7. The amount of any damage caused.

If Boland has failed to prove any of these propositions, he is not entitled to damages. If Boland has proved all of these propositions, he is entitled to damages in some amount. You should <sup>then L&A</sup> also consider the defense of mitigation as explained to you in Instruction Number 20.

#### INSTRUCTION NO.13

A contract is an agreement between two or more persons to do or not to do something.

#### INSTRUCTION NO.14

The existence of a contract requires a meeting of the minds on the material terms. This means the parties must agree upon the same things in the same sense. You are to determine if a contract existed from the words and acts of the parties, together with all reasonable inferences you may draw from the surrounding circumstances.

#### INSTRUCTION NO. 15

When the terms of an agreement are definitely fixed an oral contract will be upheld unless the parties intended not to be bound until the agreement was reduced to

writing. The terms are sufficiently definite if you can determine with reasonable certainty the duty of each party and the conditions relative to performance. An agreement to agree to enter into a contract is of no effect unless all of the terms and conditions of the contract are agreed on and nothing is left to future negotiations.

#### INSTRUCTION NO. 16

"Consideration" is either a benefit given or to be given to the parties to the contract or a detriment experienced or to be experienced by the parties to the contract.

Where the contract provides for mutual promises, each promise is a consideration for the other promise.

#### INSTRUCTION NO. 17

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

#### INSTRUCTION NO. 18

The measure of damages for breach of a contract is an amount that would place the Plaintiff in as good a position as he 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.

In considering damages, you may consider the following:

- Losses suffered from not being able to purchase the Coop's Skyline shares.



- Losses suffered from fulfilling the Big Stone Contract.
- Losses suffered from liquidation.
- Losses suffered from not finishing pigs in 2014.

#### INSTRUCTION NO. 19

In arriving at the amount of any loss of profits sustained by Boland, you are entitled to consider his past earnings in the business in question, as well as any other evidence in the case bearing upon the issue. If you should find that damage to Boland's business in the form of lost profits was caused by the Coop having breached an oral contract with him, then the circumstance that the precise amount of the Boland's damages may be difficult to ascertain should not affect his recovery.

On the other hand, damages for lost profits must be established with reasonable certainty and may not be based upon speculation and conjecture. There must be a reasonable basis in the evidence for determining that <sup>LGA</sup> ~~the~~ Boland has, in fact, suffered a loss of profits, even though the amount of such loss is difficult to ascertain.

#### INSTRUCTION NO. 20

A person asserting breach of contract has a duty to mitigate damages. This duty imposes on the complaining party the obligation to exercise all reasonable diligence to lessen the damages caused by the other party's breach. It is the Coop's burden of proof to establish that Boland failed to mitigate his damages in this case and, if so, in what amount. You should not award any damages that you find could have been mitigated by Boland.

#### INSTRUCTION NO. 21

In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

#### INSTRUCTION NO. 22

You may not communicate about this case before reaching your verdict. This includes cell phones and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete, or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in

court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules.

#### INSTRUCTION NO. 23

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. 24

Upon retiring, you shall select a foreman or forewoman. 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.

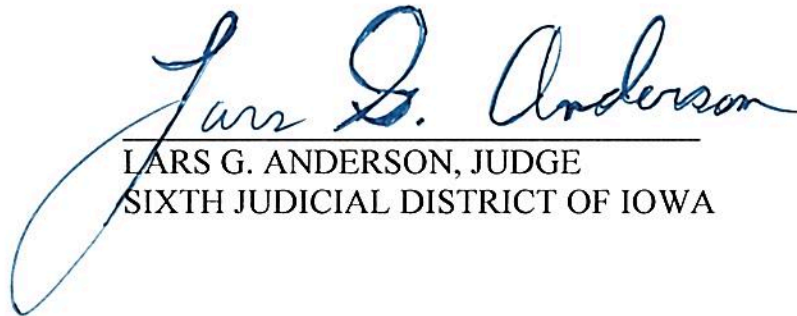
INSTRUCTION NO. 25

I am giving you one verdict form and questions. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict and answers to questions must be signed by your foreman or forewoman.

After deliberating for six hours from 12:30 o'clock p.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict and questions must be signed by all seven jurors who agree.

When you have agreed upon the verdict and answers to questions and appropriately signed it, tell the Court Attendant.

Dated this 22nd day of May, 2017.

  
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LARS G. ANDERSON, JUDGE  
SIXTH JUDICIAL DISTRICT OF IOWA

IN THE IOWA DISTRICT COURT IN AND FOR IOWA COUNTY

GARY BOLAND,

Plaintiff,

LACV 23763

v.

FARMERS COOPERATIVE  
ASSOCIATION OF KEOTA, IOWA,

FORM OF VERDICT

Defendant.

FILED  
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2011 MAY 22 PM 4:10  
CLERK OF DISTRICT COURT

We find the following verdict on the questions submitted to us:

**BREACH OF ORAL CONTRACT CLAIM FOR FIRST RIGHT OF REFUSAL**

**Question No. 1:** Did Plaintiff, Gary Boland, prove by a preponderance of the evidence the existence of an oral contract?

ANSWER:   X   Yes        No

[If your answer is "yes", go to Question No. 2. If your answer is "no", do not answer Questions 2 through 6 because Plaintiff is not entitled to damages on his breach of oral contract claim.]

**Question No. 2:** Did Plaintiff, Gary Boland, prove by a preponderance of the evidence consideration for the oral contract?

ANSWER:   X   Yes        No

[If your answer is "yes", go to Question No. 3. If your answer is "no", do not answer Questions 3 through 6 because Plaintiff is not entitled to damages on his breach of oral contract claim.]

**Question No. 3:** Did Plaintiff, Gary Boland, prove by a preponderance of the evidence the terms of the oral contract?

ANSWER:   X   Yes        No

[If your answer is "yes", go to Question No. 4. If your answer is "no", do not answer Questions 4 through 6 because Plaintiff is not entitled to damages on his breach of oral contract claim.]

**Question No. 4:** Did Plaintiff, Gary Boland, prove by a preponderance of the evidence that he has done what the oral contract requires?

ANSWER:   X   Yes        No

[If your answer is "yes", go to Question No. 5. If your answer is "no", do not answer Question 5 through 6 because Plaintiff is not entitled to damages on his breach of oral contract claim.]

**Question No. 5:** Did Plaintiff, Gary Boland, prove by a preponderance of the evidence that Defendant breached the oral contract?

ANSWER:   X   Yes        No

[If your answer is "yes", proceed to Question No 6. If your answer is "no", do not answer Questions 6 because Plaintiff is not entitled to damages on his breach of oral contract claim.]

**Question No. 6:** State the amount of damages sustained by Plaintiff Gary Boland as a result of the the Defendant's breach of contract as to each of the following items of damage. If Gary Boland has failed to prove any item of damage, or has failed to prove that any item of damage was caused by Defendant enter 0 for that item.

- |  |                       |
|--|-----------------------|
| 1. Losses suffered from not being able to purchase the Coop's Skyline Shares | \$ <u>  0  </u>       |
| 2. Losses suffered from liquidation  | \$ <u>  0  </u>       |
| 3. Losses suffered from fulfilling the Big Stone Contract                    | \$ <u>509,064</u> ✓   |
| 4. Losses suffered from not finishing pigs in 2014                           | \$ <u>886,703</u> ✓   |
| TOTAL (add the separate items of damage)                                     | \$ <u>1,395,767</u> ✓ |

[When you have completed the Verdict Form, sign and date the Verdict Form.]

Ken Bender 5-22-2017  
Foreperson\*

\* (To be signed by the foreperson only if the verdict is unanimous.)

\_\_\_\_\_  
Juror \*\*

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Juror \*\*

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Juror \*\*

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Juror \*\*

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Juror \*\*

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Juror \*\*

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Juror \*\*

\*\*(To be signed by seven jurors agreeing to the verdict after six or more hours of  
deliberation.)