

IN THE IOWA DISTRICT COURT IN AND FOR IOWA COUNTY

FARMERS COOPERATIVE ASSOCIATION)
OF KEOTA, IA,)

Plaintiff,)

vs.)

VIC VANDEHAAR, GARY BOLAND, and)
SPENCER REITZLER,)

Defendants.)

Law No. LACV023763

VIC VANDEHAAR, GARY BOLAND, and)
SPENCER REITZLER, individually and on)
behalf of WIK FEEDERS, L.L.C.,)

Counterclaim Plaintiffs,)

vs.)

FARMERS COOPERATIVE ASSOCIATION)
OF KEOTA, IA,)

Counterclaim Defendant.)

**PROPOSED JURY INSTRUCTIONS OF
COUNTERCLAIM DEFENDANT
FARMER'S COOPERATIVE
ASSOCIATION OF KEOTA, IOWA**

Counterclaim Defendant Farmers Cooperative Association of Keota Iowa, by its attorneys, submits the following proposed jury instructions and verdict form. Counterclaim Defendant reserves the right to withdraw any proposed instruction or to submit additional or amended instructions pending the court's ruling on its motions.

PRELIMINARY INSTRUCTIONS

No. 100.23 (Preliminary Instruction: Use of Electronic Devices)

PROPOSED INSTRUCTIONS

1. No. 100.1 (Statement of the Case)
2. No. 100.2 (Duties of Judge and Jury, Instructions as Whole)
3. No. 100.3 (Burden of Proof, Preponderance of Evidence)
4. No. 100.4 (Evidence)
5. No. 100.5 (Deposition Testimony)

6. No. 100.6 (Interrogatories) (if any interrogatories are used)
7. No. 100.7 (Request for Admissions)
8. No. 100.9 (Credibility of Witnesses)
9. No. 100.12 (Opinion Evidence, Expert Witness)
10. No. 100.11 (Hypothetical Question, Expert Testimony)
11. No. 100.13 (Contradictory Statement, Non-party, Witness Not Under Oath)
12. No. 100.14 (Contradictory Statement, Non-party, Witness Under Oath)
13. No. 100.20 (Corporate Party)
14. No. 2400.1 Boland - (Contract – Essentials for Recovery)
15. No. 2400.1 WIK - (Contract – Essentials for Recovery)
16. No. 2400.1 Boland – (Oral Contract – Essentials for Recovery)
17. No. 2400.3 (Contract – Existence of a Contract)
18. Non-Pattern (Contract – Agreement to Contract in Future)
19. No. 2400.4 (Contract – Consideration)
20. No. 2400.5 (Contract – Terms – Interpretation)
21. No. 2400.6 (Contract – Breach – Definition)
22. No. 2400.11 (Contract – Waiver of Performance)
23. No. 2400.8 (Contract – Affirmative Defenses – Essentials)
24. No. 700.3 (Cause – Defined)
25. No. 220.1 Boland - (Breach of Contract – Expectation Interest)
26. No. 220.1 WIK - (Breach of Contract – Expectation Interest)
27. Non-Pattern (Lost Profits - Speculative)
28. No. 400.7 Boland - (Comparative Fault – Mitigation)
29. No. 400.7 WIK - (Comparative Fault – Mitigation)
30. No. 1200.1 Boland - (Intentional Interference with Contract – Essentials for Recovery)
31. No. 1200.1 WIK - (Intentional Interference with Contract – Essentials for Recovery)
32. No. 1200.4 (Intentional Interference with Contract - Knowledge)
33. No. 1200.5 (Intentional Interference with Contract - Improper)
34. No. 1200.6 (Intentional Interference)
35. No. 200.1 (Duplicate Damages)
36. No. 200.38 (Quotient Verdict)
37. No. 100.18 (General Instruction To Jury)
38. No. 100.21 (Cautionary Instruction – Juror’s Notes)
39. No. 300.1 (Return of Verdict – Forms of Verdict)

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**ATTORNEYS FOR COUNTERCLAIM
DEFENDANT FARMERS COOPERATIVE
ASSOCIATION OF KEOTA, IOWA**

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2016, I electronically filed the foregoing with the Scott County Clerk of Court using the Iowa Courts E-Filing system which will provide notification of such filing to all counsel of record.

By: /s/ Diane M. Reinsch

Requested Preliminary Instruction

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. [Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.]

It is important that we have your full and undivided attention during this trial.

AUTHORITY

Iowa Civil Jury Instruction No. 100.23 (Use of Electronic Devices) (not modified)

INSTRUCTION NO. 1.

STATEMENT OF THE CASE

Members of the Jury:

In this case the Counterclaim Plaintiffs Gary Boland and WIK Feeders, LLC claim they are entitled to money damages from the Counterclaim Defendant Farmers Cooperative Association of Keota, Iowa (“the Coop”). The Coop denies that any Counterclaim Plaintiff is entitled to money damages.

Your duty is to determine the facts and apply the law as set out in these instructions. You will record your verdict on the verdict form included with these instructions.

Do not consider this summary as proof of any claim.

AUTHORITY

Iowa Civil Jury Instruction No. 100.1. (modified)

INSTRUCTION NO. 2.

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 likes or dislikes, sympathy, bias, prejudices or emotions.

AUTHORITY

Iowa Civil Jury Instruction 100.2 (Duties of Judge and Jury, Instructions as Whole) (not modified)

INSTRUCTION NO. 3.

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.

AUTHORITY

Iowa Civil Jury Instruction 100.3 (Burden of Proof, Preponderance of Evidence) (not modified)

INSTRUCTION NO. 4.

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.

AUTHORITY

Iowa Civil Jury Instruction 100.4 (Evidence) (not modified)

INSTRUCTION NO. 5.

Certain Testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

AUTHORITY

Iowa Civil Jury Instruction 100.5 (Deposition Testimony) (not modified)

INSTRUCTION NO. 6.

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.

AUTHORITY

Iowa Civil Jury Instruction 100.6 (Interrogatories) (not modified)

INSTRUCTION NO. 7.

The Coop served Counterclaim Plaintiff Gary Boland a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by Counterclaim Plaintiff Boland or which he failed to deny.

AUTHORITY

Iowa Civil Jury Instruction 100.7 (Request For Admissions) (non-substantive modifications)

INSTRUCTION NO. 8.

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.

AUTHORITY

Iowa Civil Jury Instruction 100.9 (Credibility of Witnesses) (Not Modified)

INSTRUCTION NO. 9.

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.

AUTHORITY

Iowa Civil Jury Instruction 100.12 (Opinion Evidence, Expert Witness) (not modified)

INSTRUCTION NO. 10.

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.

AUTHORITY

Iowa Civil Jury Instruction 100.11 (Hypothetical Question, Expert Testimony) (not modified)

INSTRUCTION NO. 11.

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.

AUTHORITY

Iowa Civil Jury Instruction No. 100.13 (Contradictory Statement, Non-party, Witness Not Under Oath) (not modified)

INSTRUCTION NO. 12.

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 non-party 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.

AUTHORITY

Iowa Civil Jury Instruction 100.14 (Contradictory Statements, Non-Party, Witness Under Oath)
(not modified)

INSTRUCTION NO. 13.

The fact that a plaintiff or defendant is a corporation should not affect your decision. All persons 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.

AUTHORITY

Iowa Civil Jury Instruction No. 100.20 (Corporate Party) (not modified).

BREACH OF CONTRACT CLAIMS

INSTRUCTION NO. 14.

Counterclaim Plaintiff Gary Boland has alleged that the Coop breached its written contract for Skyline pigs with Gary Boland. Gary Boland must prove all of the following propositions:

1. The existence of a contract.
2. The consideration.
3. The terms of the contract.
4. Gary Boland has done what the contract requires.
5. The Coop has breached the Skyline pig contract by failing to give Gary Boland notice of termination of the contract.
6. The amount of any damage the Coop has caused.

If Gary Boland has failed to prove any of these propositions, he is not entitled to damages. If Gary Boland has proved all of these propositions, then you will consider the defense of waiver as explained in Instruction No. _____ and the defense of mitigation of damages as explained in Instruction No. _____.

AUTHORITY

Iowa Civil Jury Instruction 2400.1 (Contract – Essentials for Recovery) (modified)

INSTRUCTION NO. 15.

Counterclaim Plaintiff WIK Feeders, LLC has alleged that the Coop breached its written contract for Skyline pigs with WIK Feeders. WIK Feeders must prove all of the following propositions:

1. The existence of a contract.
2. The consideration.
3. The terms of the contract.
4. WIK has done what the contract requires.
5. The Coop has breached the Skyline pig contract with WIK Feeders by failing to give

WIK Feeders notice of termination of the contract.

6. The amount of any damage the Coop has caused.

If WIK has failed to prove any of these propositions, it is not entitled to damages. If WIK Feeders has proved all of these propositions, then you will consider the defense of mitigation of damages as explained in Instruction No. _____.

AUTHORITY

Iowa Civil Jury Instruction 2400.1 (Contract – Essentials for Recovery) (modified)

INSTRUCTION NO. 16.

Counterclaim Plaintiff Gary Boland has alleged that the Coop breached an oral contract to provide him the right to purchase his pro rata share of Skyline pigs when the Coop sold its interest in Skyline. Gary Boland must prove all of the following propositions:

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

If Gary Boland has failed to prove any of these propositions, he is not entitled to damages. If Gary Boland has proved all of these propositions, then you will consider the defense of waiver as explained in Instruction No. _____ and the defense of mitigation of damages as explained in Instruction No. _____.

AUTHORITY

Iowa Civil Jury Instruction 2400.1 (Contract – Essentials for Recovery) (modified)

INSTRUCTION NO. 17.

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.

AUTHORITY

Iowa Civil Jury Instruction 2400.3 (Contract – Existence of a Contract) (not modified)

INSTRUCTION NO. 18.

An agreement to enter into a contract in the future is not enforceable as an oral contract unless all of the terms and conditions are agreed on and nothing is left to future negotiations. If the terms are definitely fixed, then the agreement may constitute an oral contract if the parties intended to be bound before the agreement was reduced to writing.

AUTHORITY

Scott v. Grinnell Mut. Reinsurance Co., 653 N.W.2d 556, 562 (Iowa 2002)

Whalen v. Connelly, 545 N.W.2d 284, 293 (Iowa 1996).

Severson v. Elberon Elevator, Inc., 250 N.W.2d 417, 420 (Iowa 1977)

INSTRUCTION NO. 19.

“Consideration” is either a benefit given or to be given to the person who makes the promise or a detriment experienced or to be experienced by the person to whom the promise is made. Where the contract provides for mutual promises, each promise is a consideration for the other promise.

AUTHORITY

Iowa Civil Jury Instruction 2400.4 (Contract – Consideration) (not modified)

INSTRUCTION NO. 20.

In determining the terms of a 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.

AUTHORITY

Iowa Civil Jury Instruction 2400.5 (Contract – Terms – Interpretation) (not modified)

INSTRUCTION NO. 21.

A breach of the contract occurs when a party fails to perform a term of the contract that he has an obligation to perform.

AUTHORITY

Iowa Civil Jury Instruction 2400.6 (Contract – Breach – Definition) (modified)

INSTRUCTION NO. 22.

The right to insist on performance can be given up. This is known as a "waiver". A waiver may be shown by actions, or you may conclude from Gary Boland's conduct and the surrounding circumstances that a waiver was intended. The essential elements of a waiver are the existence of a right, knowledge of that right, and an intention to give it up.

AUTHORITY

Iowa Civil Jury Instruction 2400.11 (Contract – Waiver of Performance) (non-substantive modifications)

INSTRUCTION NO. 23.

The Coop claims that its obligation to give Gary Boland notice was excused because Gary Boland waived performance of the notice requirement. If the Coop has proved waiver, then you shall find for the Coop. If the Coop has failed to prove waiver, then you shall decide whether Gary Boland is entitled to recover damages.

AUTHORITY

Iowa Civil Jury Instruction 2400.8 (Contract – Affirmative Defenses - Essentials) (modified)

INSTRUCTION NO. 24.

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

AUTHORITY

Iowa Civil Jury Instruction 700.3 (Cause – Defined) (not modified)

INSTRUCTION NO. 25.

The measure of damages for breach of a contract is an amount that would place Gary Boland in as good a position as he would have enjoyed if the contract had been performed. Recovery is limited to the loss Gary Boland actually suffered by reason of the breach and he is not entitled to be placed in a better position than he would have been in if the contract had not been breached. 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 your consideration of the damages, you may consider the following:

1. If a party fails to give a notice of termination of a contract that was required and not excused, the non-breaching party may recover damages that accrued during the period of time equal to the notice period;
2. The measure of damages for failure to honor an option to purchase shares is the difference between the price at which the party could have purchased the shares and the fair market value of the shares at the time the shares should have been made available for purchase.

AUTHORITY

Iowa Civil Jury Instruction 220.1 (Breach of Contract – Expectation Interest) (modified)

Midland Mut. Life Ins. Co. v. Mercy Clinics, Inc., 579 N.W.2d 823, 831 (Iowa 1998)

Hilgenberg v. Iowa Beef Packers, Inc., 175 N.W.2d 353, 363 (Iowa 1970)

Des Moines Blue Ribbon Distributors, Inc. v. Drewrys Ltd., 129 N.W.2d 731 (Iowa 1964)

INSTRUCTION NO. 26.

The measure of damages for breach of a contract is an amount that would place WIK Feeders in as good a position as they would have enjoyed if the contract had been performed. Recovery is limited to the loss WIK Feeders actually suffered by reason of the breach and WIK Feeders is not entitled to be placed in a better position than it would have been in if the contract had not been breached. 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 your consideration of the damages, you may consider the following:

(List the items of damage claimed and allowable according to the facts of the case.)

1. If a party fails to give a notice of termination of a contract that was required and not excused, the non-breaching party may recover damages that accrued during the period of time equal to the notice period.

AUTHORITY

Iowa Civil Jury Instruction 220.1 (Breach of Contract – Expectation Interest) (modified)

Midland Mut. Life Ins. Co. v. Mercy Clinics, Inc., 579 N.W.2d 823, 831 (Iowa 1998)

Hilgenberg v. Iowa Beef Packers, Inc., 175 N.W.2d 353, 363 (Iowa 1970)

Des Moines Blue Ribbon Distributors, Inc. v. Drewrys Ltd., 129 N.W.2d 731 (Iowa 1964)

INSTRUCTION NO. 27.

Lost profits may not be awarded if they are speculative, contingent, conjectural, remote or uncertain. Lost profits should not be awarded if the evidence is uncertain and speculative whether the Counterclaim Plaintiffs sustained lost profit damages.

AUTHORITY

Malachy Roman Catholic Congregation of Geneseo v. Ingram, 841 N.W.2d 338, 352 (Iowa 2014)
Shinrone, Inc. v. Tasco, Inc., 283 N.W.2d 280, 286 (Iowa 1979).

INSTRUCTION NO. 28.

The Coop claims Gary Boland was at fault for failing to mitigate his damages. He has a duty to exercise ordinary care to reduce, minimize or limit his damages. However, Gary Boland has no duty to do something that is unreasonable under the circumstances.

To prove the Coop's claim of failure to mitigate, it must prove all of the following:

1. There was something Gary Boland could do to mitigate his damages;
2. Requiring Gary Boland to do so was reasonable under the circumstances;
3. Gary Boland acted unreasonable in failing to undertake the mitigating activity; and
4. His failure to undertake the mitigating activity caused an identifiable portion of his damages.

If the Coop has proved all of these numbered propositions, then the Coop has proved this defense, and you shall assign a percentage of fault to Gary Boland for the time period after the failure to mitigate. This amount will be used in answering the special interrogatory in the verdict. If the Coop has failed to prove one or more of these numbered propositions, then the Coop has not proved Gary Boland failed to mitigate his damages.

AUTHORITY

Iowa Civil Jury Instruction 400.7 (Comparative Fault - Mitigation) (modified)

INSTRUCTION NO. 29.

The Coop claims WIK Feeders was at fault for failing to mitigate its damages. WIK Feeders has a duty to exercise ordinary care to reduce, minimize or limit its damages. However, WIK Feeders has no duty to do something that is unreasonable under the circumstances.

To prove the Coop's claim of failure to mitigate, it must prove all of the following:

1. There was something WIK Feeders could do to mitigate its damages;
2. Requiring WIK Feeders to do so was reasonable under the circumstances;
3. WIK Feeders acted unreasonable in failing to undertake the mitigating activity; and
4. Its failure to undertake the mitigating activity caused an identifiable portion of its damages.

If the Coop has proved all of these numbered propositions, then the Coop has proved this defense, and you shall assign a percentage of fault to WIK Feeders for the time period after the failure to mitigate. This amount will be used in answering the special interrogatory in the verdict. If the Coop has failed to prove one or more of these numbered propositions, then the Coop has not proved WIK Feeders failed to mitigate his damages.

AUTHORITY

Iowa Civil Jury Instruction 400.7 (Comparative Fault - Mitigation) (modified)

TORTIOUS INTERFERENCE CLAIMS

INSTRUCTION NO. 30.

Gary Boland claims that the Coop interfered with his packer contract with Big Stone. Gary Boland must prove all of the following propositions:

1. He had a contract with a third party.
2. The Coop knew of the contract.
3. The Coop intentionally and improperly interfered with the contract.
4. The interference caused Gary Boland's performance of the contract to be more burdensome or expensive.
5. The nature and amount of damage.

If Gary Boland has failed to prove any one or more of these propositions, he is not entitled to damages. If Gary Boland has proved all of these propositions, then you will consider the defense of mitigation of damages as explained in Instruction No. _____.

AUTHORITY

Iowa Civil Jury Instruction 1200.1 (Intentional Interference with Contract – Essentials for Recovery) (modified)

INSTRUCTION NO. 31.

WIK Feeders claims that the Coop interfered with its contracts with Duane Fisher. WIK must prove all of the following propositions:

1. He had a contract with a third party.
2. The Coop knew of the contract.
3. The Coop intentionally and improperly interfered with the contract.
4. The interference caused Gary Boland's performance of the contract to be more burdensome or expensive.
5. The nature and amount of damage.

If WIK Feeders has failed to prove any one or more of these propositions, he is not entitled to damages. If Gary Boland has proved all of these propositions, then you will consider the defense of mitigation of damages as explained in Instruction No. _____.

AUTHORITY

Iowa Civil Jury Instruction 1200.1 (Intentional Interference with Contract – Essentials for Recovery) (modified)

INSTRUCTION NO. 32.

Concerning proposition No. 2 of Instructions ____ and ____, the Coop “knew” of the contract if the Coop either had actual knowledge of the contract or else had knowledge of facts which, if followed by reasonable inquiry, would have led to disclosure of the contract between the Gary Boland and WIK Feeders and the third parties.

AUTHORITY

Iowa Civil Jury Instruction 1200.4 (Intentional Interference with Contract – Knowledge) (non-substantive modifications)

INSTRUCTION NO. 33.

Concerning proposition No. 3 of Instructions _____ and _____, in determining whether the Coop conduct was improper you should determine whether the conduct was fair and reasonable under the circumstances. In determining whether the conduct was improper you may consider:

1. The nature of the conduct.
2. The Coop's motive.
3. The interests of the party with which the conduct interferes.
4. The interest sought to be advanced by the Coop.
5. The social interests in protecting the freedom of action of the Coop and the contractual interests of the other party.
6. The nearness or remoteness of the Coop's conduct to the interference.
7. The relations between the parties.

There is no improper interference when a party simply exercises its own legal rights to protect its own interests.

AUTHORITY

Iowa Civil Jury Instruction 1200.5 (Intentional Interference with Contract – Improper)
(substantive modifications)
Jackson v. State Bank of Wapello, 488 N.W.2d 151, 157 (Iowa 1992)

INSTRUCTION NO. 34.

Concerning proposition No. 3 of Instructions _____ and _____, interference with a contract is intentional if the party either interferes with the contract on purpose or knows the conduct is substantially certain to interfere with the contract.

AUTHORITY

Iowa Civil Jury Instruction 1200.6 (Intentional Interference) (non-substantive modifications)

INSTRUCTION NO. 35.

Gary Boland and WIK Feeders cannot receive duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

AUTHORITY

Iowa Civil Jury Instruction 200.1 (Duplicative Damages) (Modified)

INSTRUCTION NO. 36.

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

AUTHORITY

Iowa Civil Jury Instruction 200.38 (Quotient Verdict) (not modified)

INSTRUCTION NO. 37.

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.

AUTHORITY

Iowa Civil Jury Instruction 100.18 (General Instruction To Jury) (not modified)

INSTRUCTION NO. 38.

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.

AUTHORITY

Iowa Civil Jury Instruction 100.21 (Cautionary Instruction - Juror's Notes) (not modified)

INSTRUCTION NO. 39.

I am giving you _____ verdict forms 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 _____ o'clock _____.m. excluding meals or recesses outside your jury room, then it is necessary that only (seven) (six)* of you agree upon the answers to the questions. In that case, the verdict and questions must be signed by all (seven) (six)* jurors who agree.

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

AUTHORITY

Iowa Civil Jury Instruction 300.1 (Return Of Verdict - Forms Of Verdict) (non-substantive modification)