

IN THE IOWA DISTRICT COURT IN AND FOR IOWA COUNTY

GARY BOLAND,

Plaintiff,

vs.

FARMERS COOPERATIVE  
ASSOCIATION OF KEOTA, IA,

Defendant.

Case No. LACV023763

**PROPOSED JOINT JURY INSTRUCTIONS**

The above-named parties, by and through undersigned counsel, hereby submit these Proposed Joint Jury Instructions and Verdict Forms. The parties reserve the right to withdraw any proposed instruction or to submit additional or amended instructions pending the court's ruling on its motions.

Dated this 11th day of May, 2017.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon all parties to the above-entitled cause at their respective addresses as disclosed by the pleadings of record herein, on the 11th day of May, 2017.

Method of Service: ☐ U.S. Mail ☐ Overnight Courier ☐ Email ☒ E-filed  
☐ Fax ☐ Hand Delivery ☐ Clerk's Bin

/s/ Jessica L. Hlubek

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**1. REQUESTED PRELIMINARY INSTRUCTIONS:**

**JURY INSTRUCTION NO. 1: USE OF ELECTRONIC DEVICES**

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 (NOT MODIFIED)

JURY INSTRUCTION NO. 2: JUROR'S NOTES

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 No. 100.21 (NOT MODIFIED)

**2. GENERAL INSTRUCTIONS:**

**JURY INSTRUCTION NO. 3: STATEMENT OF THE CASE**

**3A: COOP'S PROPOSED INSTRUCTION.**

Members of the Jury:

In this case the Plaintiff Gary Boland claims he is entitled to money damages from the Defendant Farmers Cooperative Association of Keota, Iowa. The Coop denies that 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)

**3B: BOLAND'S PROPOSED INSTRUCTION.**

Members of the Jury:

The parties to this lawsuit are the Plaintiff, Gray Boland, a hog farmer from Iowa County, and the Defendant, the Farmer's Cooperative Association of Keota, Iowa (the "Coop").

In approximately 2007, the Coop began its Skyline Project with the purpose of increasing the Coop's feed business. The Skyline Project involved purchasing 60,000 shares in a sow unit called Skyline Pork, L.L.C. ("Skyline"), organizing one or more feeding groups, and then selling feed and Skyline isowean pigs to the feeding groups and other hog producer customers. Mr. Boland was one of the hog producers who the Coop persuaded to get involved with the Skyline Project. The Coop's Skyline Project was terminated in 2011, when the Coop sold all of its shares



back to the remaining members of Skyline. Boland's claims arise out of the circumstances surrounding the Coop's sale of the Skyline shares.

Count I: Mr. Boland makes a claim against the Coop for breach of contract. Boland alleges that in 2007, the Coop (Jeff Sprouse and Duane Sprouse) 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 (ie purchase Skyline pigs and help the Coop run its feeding group) and to purchase all premix and soybean meal exclusively from the Coop. Boland sued the Coop for breaching the oral contract after the Coop sold the shares in 2011 without providing Boland with the right of first refusal and then refusing to honor the oral contract. Boland seeks to recover the lost profits and lost equity from not being able to purchase of his pro rata portion (14,400) of the Skyline shares, lost profits from not finishing pigs in 2014 and losses from forced liquidation.

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

Count II: Mr. Boland makes a claim against the Coop for intentional interference with his packer contract. Boland alleges that the only reason he signed a packer contract with Big Stone in May 2011 (the "Big Stone Contract") was because he relied on the Coop's 2007 promise that he would have the right of first refusal and on additional representations and assurances made by the Coop in 2011 that they would continue to provide him with a stable pig source. Boland sued the Coop for intentional interference after the Coop sold the shares to Skyline in 2011 and eliminated his stable pig source. Boland seeks to recover the damages he sustained as a result of the Coop's interference, which includes the increased burden and expense of fulfilling the Big Stone Contract, the losses from causing Boland not to perform the Big Stone Contract in 2014, and losses from

forced liquidation. Boland also seeks to recover punitive damages as a result of the Coop's willful and wanton disregard for the rights of another.

The Coop denies all responsibility on Boland's claim for intentional interference with his packer contract.

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.

**Authority:**

Iowa Civil Jury Instruction No. 100.1. (MODIFIED)

INSTRUCTION NO. 4: DUTIES OF JUDGE AND JURY, INSTRUCTIONS AS WHOLE

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.

**Authority:**

Iowa Civil Jury Instruction No. 100.2 (NOT MODIFIED)

INSTRUCTION NO. 5: BURDEN OF PROOF, PREPONDERANCE OF EVIDENCE

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 No. 100.3 (NOT MODIFIED)

INSTRUCTION NO. 6: EVIDENCE

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 No. 100.4 (NOT MODIFIED)

INSTRUCTION NO. 7: DEPOSITION TESTIMONY

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 No. 100.5 (NOT MODIFIED)

INSTRUCTION NO. 8: INTERROGATORIES

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 No. 100.6 (NOT MODIFIED)

INSTRUCTION NO. 9: REQUEST FOR ADMISSIONS

The Coop served 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 Gary Boland or which he failed to deny.

**Authority:**

Iowa Civil Jury Instruction No. 100.7 (MODIFIED)



INSTRUCTION NO. 10: CREDIBILITY OF WITNESSES

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 No. 100.9 (NOT MODIFIED)

INSTRUCTION NO. 11: OPINION EVIDENCE, EXPERT WITNESS

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 No. 100.12 (NOT MODIFIED)

INSTRUCTION NO. 12: HYPOTHETICAL QUESTION, EXPERT TESTIMONY

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 No. 100.11 (NOT MODIFIED)

INSTRUCTION NO. 13: CONTRADICTORY STATEMENT, NON-PARTY, WITNESS NOT UNDER OATH

You have heard evidence claiming [name of 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 (NOT MODIFIED)

INSTRUCTION NO. 14: CONTRADICTORY STATEMENT, NON-PARTY, WITNESS UNDER OATH

You have heard evidence claiming [name of 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 [name of 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 No. 100.14 (NOT MODIFIED)

INSTRUCTION NO. 15: STATEMENTS BY A PARTY OPPONENT

You have heard evidence claiming [name of party] 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 [name of party] had made it under oath during the trial.

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

You should not disregard [name of party]'s testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

**Authority:**

Iowa Civil Jury Instruction No. 100.15 (NOT MODIFIED)

JURY INSTRUCTION NO. 16: IMPEACHMENT, CHARACTER AND REPUTATION

You have heard evidence claiming the witness has a reputation and/or character trait for not telling the truth. You may use that evidence only to help you decide whether to believe the witness and how much weight to give his testimony.

**Authority:**

Iowa Civil Jury Instruction No. 100.16 (NOT MODIFIED)

JURY INSTRUCTION NO. 17: CORPORATE PARTY

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.

**Authority:**

Iowa Civil Jury Instruction No. 100.20 (NOT MODIFIED)



JURY INSTRUCTION NO. 18: LIABILITY OF EMPLOYER

**18A: COOP'S PROPOSED INSTRUCTION.**

None.

**18B: BOLAND'S PROPOSED INSTRUCTION.**

An employer or corporation is liable for the negligent and/or wrongful acts of an officer, agent or employee if the acts are done in the scope of the employment.

**Authority:**

Iowa Civil Jury Instruction No. 730.1 (NOT MODIFIED)

JURY INSTRUCTION NO. 19: SCOPE OF EMPLOYMENT

**19A: COOP'S PROPOSED INSTRUCTION.**

None.

**19B: BOLAND'S PROPOSED INSTRUCTION.**

For an act to be within the scope of an employee's employment, the act must be necessary to accomplish the purpose of the employment, and it must be intended to accomplish that purpose.

**Authority:**

Iowa Civil Jury Instruction No. 730.2 (NOT MODIFIED)

**2. BREACH OF ORAL CONTRACT:**

**JURY INSTRUCTION NO. 20: ESSENTIALS FOR RECOVERY**

**20A: COOP'S PROPOSED INSTRUCTION.**

Gary Boland must prove all of the following propositions regarding his claim for breach of an oral contract:

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 mitigation of damages as explained in Instruction No. \_\_\_\_\_.

**Authority:**

Iowa Civil Jury Instruction 2400.1 (MODIFIED)

**20B: BOLAND'S PROPOSED INSTRUCTION.**

Gary Boland must prove all of the following propositions by a preponderance of the evidence:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The consideration.
4. The terms of the contract.
5. (a) Gary Boland has done what the contract requires

OR

- (b) Gary Boland has been excused from doing what the contract requires as explained in Instructions No. 26 and No. 27.

6. The Coop has breached the contract.
7. The amount of any damage 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, he is entitled to damages in some amount.

**Authority:**

Iowa Civil Jury Instruction 2400.1 (MODIFIED)

JURY INSTRUCTION NO. 21: COMPETENCY

**21A: COOP'S PROPOSED INSTRUCTION.**

None.

**21B: BOLAND'S PROPOSED INSTRUCTION.**

A person is capable of making a contract unless the person lacked sufficient mental capacity to understand it. All acts and contracts of an agent, which are within the apparent scope of authority conferred on him or her, are also binding upon the principal.

**Authority:**

Iowa Civil Jury Instruction 2400.2 (MODIFIED)

*Magnusson Agency V. Public Entity Nat. Company-Midwest*, 560 N.W.2d 20, 25 (Iowa 1997)

JURY INSTRUCTION NO. 22: EXISTENCE OF A CONTRACT

**22A: COOP'S PROPOSED INSTRUCTION.**

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 (NOT MODIFIED)

**22B: BOLAND'S PROPOSED INSTRUCTION.**

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.

When the terms of an agreement are definitely fixed so that nothing remains except to reduce them to writing, 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 the jury can determine with reasonable certainty: (1) the duty of each party and (2) the conditions relative to performance.

**Authority:**

Iowa Civil Jury Instruction 2400.3 (MODIFIED)

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

JURY INSTRUCTION NO. 23: ENFORCEABILITY OF ORAL CONTRACTS

**23A: COOP'S PROPOSED INSTRUCTION.**

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:**

NEW INSTRUCTION (Not based on any Iowa Civil Jury Instruction)

*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)

**23B: BOLAND'S PROPOSED INSTRUCTION.**

To find the existence of an oral contract, there must be sufficient evidence of its terms to ascertain the duties and conditions established.

An oral contract does not need to contain definitely and specifically every fact in detail to which the parties may be agreeing. The contract need only be certain and unequivocal in its essential terms. Absolute certainty is not required; only reasonable certainty is necessary.

**Authority:**

NEW INSTRUCTION (Not based on any Iowa Civil Jury Instruction)

*Audus v. Sabre Communications Corp.*, 554 N.W.2d 868, 871 (Iowa 1996).

*In re Guardianship and Conservatorship of Price*, 571 N.W.2d 214, 216-17 (Iowa Ct. App. 1997)

JURY INSTRUCTION NO. 24: CONSIDERATION

**24A: COOP'S PROPOSED INSTRUCTION.**

“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.

Each contract must be supported by its own consideration. The consideration that is given to form one contract cannot be used a second time to form a different contract.

**Authority:**

Iowa Civil Jury Instruction 2400.4 (MODIFIED)

*In re Simplot's Estate*, 246 N.W. 396, 398 (Iowa 1933).

**24B: BOLAND'S PROPOSED INSTRUCTION.**

"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.

**Authority:**

Iowa Civil Jury Instruction 2400.4 (NOT MODIFIED)



JURY INSTRUCTION NO. 25: TERMS - INTERPRETATION

**25A: COOP'S PROPOSED INSTRUCTION.**

None.

**25B: BOLAND'S PROPOSED INSTRUCTION.**

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.

**Authority:**

Iowa Civil Jury Instruction 2400.5 (NOT MODIFIED)

JURY INSTRUCTION NO. 26: PERFORMANCE BY PLAINTIFF

**26A: COOP'S PROPOSED INSTRUCTION.**

None.

**26B: BOLAND'S PROPOSED INSTRUCTION.**

When a person agrees to do something for a specified consideration to be received after full performance, they are not entitled to any part of the consideration until they have performed as agreed unless full performance has been excused, waived, prevented, or delayed by the act of the other party.

However, a plaintiff who has not fully performed under the terms of the contract may still recover some amount if the failure to render performance due at an earlier time was not material (subject to defendant's claim for partial breach).

In determining whether a failure to render or to offer performance is material, the following circumstances are significant:

1. The extent to which defendant will be deprived of the benefit which defendant reasonably expected.
2. The extent to which defendant can be adequately compensated for the part of that benefit of which defendant will be deprived.
3. The extent to which plaintiff will suffer forfeiture.
4. The likelihood that plaintiff will cure the failure, taking account of all the circumstances including any reasonable assurances.

5. The extent to which the behavior of the plaintiff is in line with standards of good faith and fair dealing.

**Authority:**

Iowa Civil Jury Instruction 2400.7 (NOT MODIFIED)

JURY INSTRUCTION NO. 27: WHEN PERFORMANCE IS EXCUSED

**27A: COOP'S PROPOSED INSTRUCTION.**

None.

**27B: BOLAND'S PROPOSED INSTRUCTION.**

Performance may be excused in the following circumstances:

(a) Renunciation:

Performance is excused where one party clearly rejects the contract by giving notice to the other that they will not perform.

(b) Prevention of Performance:

Performance is excused if the other party prevents it or makes it impossible.

(c) Impossibility of Performance:

Performance may be excused in circumstances where performance is impossible.

Impossibility of performance means extraordinary circumstances which:

1. Prevent a person from carrying out the terms of the contract.
2. Could not reasonably have been anticipated; and
3. Are not the fault of that party.

Performance is not excused if the party who promised to perform created the circumstances which made performance impossible, or just because performance became economically burdensome or unattractive.

**Authority:**

- 27(a) Iowa Civil Jury Instruction 2400.12 (Renunciation) (NOT MODIFIED)
- 27(b) Iowa Civil Jury Instruction 2400.10 (Prevention of Performance) (NOT MODIFIED)
- 27(c) Iowa Civil Jury Instruction 2400.9 (Impossibility of Performance) (MODIFIED)

JURY INSTRUCTION NO. 28: BREACH - DEFINITION

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

**Authority:**

Iowa Civil Jury Instruction 2400.6 (NOT MODIFIED)

JURY INSTRUCTION NO. 29: COMPARATIVE FAULT - MITIGATION

**29A: COOP'S PROPOSED INSTRUCTION.**

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)

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

**29B: BOLAND'S PROPOSED INSTRUCTION.**

None.

JURY INSTRUCTION NO. 30: DAMAGES FOR BREACH OF CONTRACT-EXPECTATION INTEREST

**30A: COOP'S PROPOSED INSTRUCTION.**

The measure of damages for breach of a contract for is an amount that would place Gary Boland 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 your consideration of the damages, you may consider the following: the lost benefit of a bargain such as the lost first right of refusal Gary Boland claims, is the difference between the price at which he 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 (MODIFIED)

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

**30B: BOLAND'S PROPOSED INSTRUCTION.**

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 have been contemplated by the parties when the parties entered into the agreement or must be foreseeable or have been reasonably foreseen at the time the parties entered into the contract or the time the representation was made.

Whether the damages were reasonably anticipated by the parties when the contract was formed may be determined from the terms of the agreement in the light of the facts, including the nature and purpose of the contract and circumstances attending its execution.



Damages may also be considered foreseeable if they arise from the ordinary cause of events or as a result of special circumstances that the party in breach had reason to know.

In your consideration of the damages, you may consider the following:

- Losses suffered from not being able to purchase the Coop's Skyline shares.
- Losses suffered from not finishing pigs in 2014.
- Losses suffered from fulfilling the Big Stone Contract after losing stable pig source.
- Losses suffered from forced liquidation.

**Authority:**

Iowa Civil Jury Instruction 220.1 (MODIFIED)

*Kuehl v. Freeman Bros. Agency, Inc.*, 521 N.W.2d 714, 718 (Iowa 1994)(quoting 22 Am.Jur.2d Damages § 460, at 541 (1988))

*Royal Indem. Co. v. Factory Mut. Ins. Co.*, 786 N.W.2d 839, 847 (Iowa 2010) (quoting Restatement (Second) of Contracts § 351, at 135 (1981))

JURY INSTRUCTION NO. 31: DAMAGES FOR BREACH OF CONTRACT-LOST PROFITS

**31A: COOP'S PROPOSED INSTRUCTION.**

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 Gary Boland sustained lost profit damages.

**Authority:**

NEW INSTRUCTION (Not based on any Iowa Civil Jury Instruction)

*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)

**31B: BOLAND'S PROPOSED INSTRUCTION.**

Lost profits are a permissible item of damages so long as the profits are not based on conjecture and speculation. Mere difficulty in ascertaining the amount of damages does not alone constitute a cause for denial of recovery.

When the profits which are sought are those arising out of the breached contract, those profits are presumed to have been in the contemplation of the defaulting party at the time he entered into the contract, and are recoverable if proved with reasonable certainty.

**Authority:**

NEW INSTRUCTION (Not based on any Iowa Civil Jury Instruction)

*Shinrone, Inc. v. Tasco, Inc. Eyeglasses*, 283 N.W.2d 280, 284-86 (Iowa 1979)

*Yost v. City of Council Bluffs*, 471 N.W.2d 836, 840-41 (Iowa 1991)

**3. INTENTIONAL INTERFERENCE WITH A CONTRACT:**

**JURY INSTRUCTION NO. 32: ESSENTIALS FOR RECOVERY**

**32A: COOP'S PROPOSED INSTRUCTION.**

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 (MODIFIED)

**32B: BOLAND'S PROPOSED INSTRUCTION.**

Gary Boland must prove all of the following propositions:

1. Gary Boland had a contract with Big Stone.
2. The Coop knew of the contract.
3. The Coop intentionally and improperly interfered with the contract in one or more of the following ways:
  - The Coop eliminated Mr. Boland's stable pig source after promising him the right of first refusal in 2007 (at or around the same time the Coop had promised the right of first refusal to Skyline) and then giving him assurances and promising him a continued stable pig source in 2011 (at the same time the Coop was secretly considering selling the Skyline shares). Boland relied on these promises and representations, believed he had a stable pig source and signed the Big Stone Contract (which eliminated all of the flexibility in his operation).
  - The Coop eliminated Mr. Boland's stable pig source after lying to Boland and assuring him that his source of Skyline pigs was secure in June 2011 (at the same time the Coop was negotiating the secret sale of the Skyline shares). Boland did not begin searching for a replacement pig source at an earlier time because he relied on these representations and believed he had a stable pig source.
  - The Coop sold the Skyline shares without providing Mr. Boland with the right of first refusal as promised. If the Coop would have sold Boland the shares, then he would not have had an interruption in pig flow or such severe issues with disease and he would not have been forced to terminate the Big Stone Contract in 2013 (preventing him from feeding pigs in 2014).
  - The Coop eliminated Mr. Boland's stable pig source in a way that was improper given the nature of the hog industry and the circumstances involved with finding a replacement pig source. Despite the Coop's assurances that there would not be an interruption in pig source,

the Coop did not provide Boland with notice that it might be eliminating his pig source, even when the Coop knew they would be eliminating his pig source, could have provided advance warning and knew that it would likely cause problems for Boland's operation. By withholding this information, the Coop prevented Boland from mitigating.

4. a. The interference caused Gary Boland not to perform the BigStone Contract in 2014;  
and/or
  - b. 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 of these propositions, he is not entitled to damages. If Gary Boland has proved all of these propositions, he is entitled to damages in some amount.

**Authority:**

Iowa Civil Jury Instruction 1200.1 (MODIFIED)

JURY INSTRUCTION NO. 33: DEFINITION OF CONTRACT

**33A: COOP'S PROPOSED INSTRUCTION.**

Concerning proposition No. 1 of Instruction \_\_\_\_, a contract is an agreement between two or more persons to do or not to do something.

**Authority:**

Iowa Civil Jury Instruction 1200.3 (MODIFIED)

**33B: BOLAND'S PROPOSED INSTRUCTION.**

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

**Authority:**

Iowa Civil Jury Instruction 1200.3 (NOT MODIFIED)

JURY INSTRUCTION NO. 34: KNOWLEDGE OF CONTRACT

**34A: COOP'S PROPOSED INSTRUCTION.**

Concerning proposition No. 2 of Instruction \_\_\_\_, 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 Big Stone.

**Authority:**

Iowa Civil Jury Instruction 1200.4 (MODIFIED)

**34B: BOLAND'S PROPOSED INSTRUCTION.**

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 Boland and Big Stone.

**Authority:**

Iowa Civil Jury Instruction 1200.4 (NOT MODIFIED)

JURY INSTRUCTION NO. 35: IMPROPER INTERFERENCE

**35A: COOP'S PROPOSED INSTRUCTION.**

Concerning proposition No. 3 of Instruction \_\_\_\_, in determining whether a defendant's conduct in intentionally interfering with a contract is 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 (MODIFIED)  
*Jackson v. State Bank of Wapello*, 488 N.W.2d 151, 157 (Iowa 1992)



**35B: BOLAND'S PROPOSED INSTRUCTION.**

In determining whether a defendant's conduct in intentionally interfering with a contract is improper you should determine whether the conduct was fair and reasonable under the circumstances.

Fairness and reasonableness are concepts that must be applied in light of the customs and practices of a particular trade. Recognized standards of business ethics and business customs and practices are pertinent, and consideration is given to concepts of fair play and whether the defendant's interference is not sanctioned by the 'rules of the game.

In determining whether the conduct was improper you may consider:

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

Gary Boland need not show that the Coop had a specific purpose to injure or destroy him. Rather, it is sufficient for Gary Boland to show that the Coop knew that interference with Boland's contractual relationship was substantially certain to result from an act committed by the Coop with some other purpose.

An interference may be improper even if the Coop exercised a legal right, if you find that the Coop exercised its legal right with an improper motive.

**Authority:**

Iowa Civil Jury Instruction 1200.5 (MODIFIED)

*Restatement (Second) of Torts* § 766, cmt j (1977)

*Restatement (Second) of Torts* § 767 cmt j; *see also Fin. Mktg. Servs., Inc. v. Hawkeye Bank & Trust of Des Moines*, 588 N.W.2d 450, 459 (Iowa 1999) (citing cmt j.).

JURY INSTRUCTION NO. 36: INTENTIONAL INTERFERENCE

**36A: COOP'S PROPOSED INSTRUCTION.**

Concerning proposition No. 3 of Instructions \_\_\_\_\_, 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 (MODIFIED)

**36B: BOLAND'S PROPOSED INSTRUCTION.**

A defendant's interference with a contract is intentional if the defendant either:

(a) interferes with the contract on purpose

or

(b) knows the conduct is substantially certain to interfere with the contract.

**Authority:**

Iowa Civil Jury Instruction 1200.6 (NOT MODIFIED)

JURY INSTRUCTION NO. 37: DAMAGES FOR INTENTIONAL INTERFERENCE WITH A CONTRACT

**37A: COOP'S PROPOSED INSTRUCTION.**

None

**37B: BOLAND'S PROPOSED INSTRUCTION.**

The measure of damages for intentional interference with a contract is an amount that would compensate the plaintiff for the damages that he suffered as a result of the interference.

In your consideration of the damages, you may consider the following:

- Losses suffered from fulfilling the Big Stone Contract after losing stable pig source.
- Losses suffered from not finishing pigs in 2014.
- Losses suffered from forced liquidation.

You may also award punitive damages for intentional interference with a contract as explained in Instructions No. 37, No. 38, No. 39, and No. 40.

**Authority:**

NEW INSTRUCTION (No specific Iowa Civil Jury Instruction exists for damages for intentional interference with a contract)

JURY INSTRUCTION 38: PUNITIVE DAMAGES

**38A: COOP'S PROPOSED INSTRUCTION.**

None

**38B: BOLAND'S PROPOSED INSTRUCTION.**

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

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the Coop and others from like conduct in the future. You may award punitive damages only if the Coop's conduct warrants a penalty in addition to the amount you award to compensate for Gary Boland's actual injuries.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of the Coop's conduct that harmed Gary Boland.
2. The amount of punitive damages which will punish and discourage like conduct by the Coop. You may consider the Coop's financial condition or ability to pay. You may not, however, award punitive damages solely because of the Coop's wealth or ability to pay.
3. Gary Boland's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to Gary Boland.
4. The existence and frequency of prior similar conduct. Although you may consider harm to others in determining the nature of the Coop's conduct, you may not award punitive damages to punish the Coop for harm caused to others, or for out-of-state

conduct that was lawful where it occurred, or for any conduct by the Coop that is not similar to the conduct which caused the harm to Gary Boland in this case.

**Authority:**

Iowa Civil Jury Instruction 210.1 (MODIFIED)

JURY INSTRUCTION 39: CLEAR CONVINCING AND SATISFACTORY EVIDENCE

**39A: COOP'S PROPOSED INSTRUCTION.**

None.

**39B: BOLAND'S PROPOSED INSTRUCTION.**

Concerning an award of punitive damages as stated in Instruction No. 37, evidence is clear, convincing and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

**Authority:**

Iowa Civil Jury Instruction 100.19 (MODIFIED)

JURY INSTRUCTION 40: WILLFUL AND WANTON - DEFINED

**40A: COOP'S PROPOSED INSTRUCTION.**

None

**40B: BOLAND'S PROPOSED INSTRUCTION.**

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

**Authority:**

Iowa Civil Jury Instruction No. 210.4 (NOT MODIFIED)



JURY INSTRUCTION 41: PUNITIVE DAMAGES AGAINST A PRINCIPAL OR EMPLOYER

**41A: COOP'S PROPOSED INSTRUCTION.**

None

**41B: BOLAND'S PROPOSED INSTRUCTION.**

The Coop is liable for the punitive damages by reason of the acts of the representatives of the Coop if one of the following occurred:

1. The Coop Board of Directors or a managerial agent of the Coop authorized the act and the way it was done;  
or
2. The representative of the Coop was employed in a managerial capacity and was acting in the scope of employment;  
or
3. The Coop Board of Directors or a managerial agent of the Coop ratified or approved the act.

**Authority:**

Iowa Civil Jury Instruction No. 210.3 (MODIFIED)

## **5. JURY DELIBERATIONS**

### **JURY INSTRUCTION NO. 42: GENERAL INSTRUCTION TO JURY**

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 (NOT MODIFIED)

JURY INSTRUCTION NO. 43: DUPLICATIVE DAMAGES

**43A: COOP'S PROPOSED INSTRUCTION.**

Gary Boland 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 (Elements - Personal Injury And Vehicle Damage) (MODIFIED)

**43B: BOLAND'S PROPOSED INSTRUCTION.**

None.

JURY INSTRUCTION NO. 44: QUOTIENT VERDICT

**44A: COOP'S PROPOSED INSTRUCTION.**

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 (NOT MODIFIED)

**44B: BOLAND'S PROPOSED INSTRUCTION.**

None.

**6. VERDICT FORMS:**

**JURY INSTRUCTION 45: RETURN OF VERDICT - FORMS OF VERDICT**

**45A: COOP'S PROPOSED INSTRUCTION.**

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 (MODIFIED)

**45B: BOLAND'S PROPOSED INSTRUCTION.**

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 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.

**Authority:**

Iowa Civil Jury Instruction 300.1 (MODIFIED)

JURY INSTRUCTION 46: PLAINTIFF'S VERDICT

[Use caption of case if desired]

VERDICT NO. \_\_\_\_\_

We, the Jury, find in favor of the plaintiff and fix the amount of his recovery against the defendant at \_\_\_\_\_ dollars.

\_\_\_\_\_  
FOREMAN OR FOREWOMAN\*

\*To be signed only if verdict is unanimous.

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

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

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

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

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

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

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

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

**Authority:**

Iowa Civil Jury Instruction 300.2 (Single Plaintiff and Defendant – Cases not Governed by Chapter 688 – Plaintiff's Verdict) (NOT MODIFIED)

JURY INSTRUCTION 47: DEFENDANT’S VERDICT

[Use caption of case if desired]

VERDICT NO.

We, the Jury, find in favor of the defendant and against the plaintiff.

\_\_\_\_\_  
FOREMAN OR FOREWOMAN\*

\*To be signed only if verdict is unanimous.

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

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

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

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

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

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

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

\*\*To be signed by the jurors agreeing to it after six hours or more of deliberation.

**AUTHORITY**

Iowa Civil Jury Instruction 300.3 (Single Plaintiff and Defendant – Cases not Governed by Chapter 688 – Defendant’s Verdict) (NOT MODIFIED).



JURY INSTRUCTION 48: SPECIAL INTERROGATORIES - CASES GOVERNED BY CHAPTER 668

**48A: COOP'S PROPOSED INSTRUCTION.**

**VERDICT NO.** \_\_\_\_\_

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: \_\_\_\_\_ Yes \_\_\_\_\_ No

[If your answer is "yes" go to Question No. 2. If your answer is "no" do not answer Questions 2 through 5 because Plaintiff is not entitled to damages on his breach of oral contract claim. Go to Question No. 6 to decide the tortious interference with contract claim.]

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

ANSWER: \_\_\_\_\_ Yes \_\_\_\_\_ No

[If your answer is "yes" go to Question No. 3. If your answer is "no" do not answer Questions 3 through 5 because Plaintiff is not entitled to damages on his breach of oral contract claim. Go to Question No. 6 to decide the tortious interference with contract claim.]

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

ANSWER: \_\_\_\_\_ Yes \_\_\_\_\_ No

[If your answer is "yes" go to Question No. 4. If your answer is "no" do not answer Questions 4 and 5 because Plaintiff is not entitled to damages on his breach of oral contract claim. Go to Question No. 6 to decide the tortious interference with 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: \_\_\_\_\_ Yes \_\_\_\_\_ No

[If your answer is “yes” go to Question No. 5. If your answer is “no” do not answer Question 5 because Plaintiff is not entitled to damages on his breach of oral contract claim. Go to Question No. 6 to decide the tortious interference with contract claim.]

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

ANSWER: \_\_\_\_\_ Yes \_\_\_\_\_ No

[If your answer is “yes” Plaintiff is entitled to damages on his breach of oral contract claim. If your answer is “no” Plaintiff is not entitled to damages on his breach of oral contract claim. Whether you answered “yes” or “no” go to Question No. 6 to decide the tortious interference with contract claim.]

### **TORTIOUS INTERFERENCE WITH CONTRACT CLAIM**

**Question No. 6:** Did Plaintiff Gary Boland prove by a preponderance of the evidence that the Defendant Coop knew he had a packer contract with Big Stone?

ANSWER: \_\_\_\_\_ Yes \_\_\_\_\_ No

[If your answer is “yes” go to Question No. 7. If your answer is “no” do not answer Questions 7 and 8 because Plaintiff is not entitled to damages on his tortious interference with contract claim. If you also answered “no” to Question No. 5, sign and date the verdict form below. If you answered “yes” to Question No. 5, skip to Question No. 9.]

**Question No. 7:** Did Plaintiff Gary Boland prove by a preponderance of the evidence that Defendant Coop intentionally and improperly interfered with his Big Stone packer contract as set forth in Jury Instruction No. \_\_\_\_\_?

ANSWER: \_\_\_\_\_ Yes \_\_\_\_\_ No

[If your answer is “yes” go to Question No. 8. If your answer is “no” do not answer Question 8 because Plaintiff is not entitled to damages on his tortious interference with contract claim. If you also answered “no” to Question No. 5, sign and date the verdict form below. If you answered “yes” to Question No. 5, skip to Question No. 9.]

**Question No. 8:** Did Plaintiff Gary Boland prove by a preponderance of the evidence Defendant Coop’s interference caused Gary Boland’s performance of his Big Stone packer contract to be more burdensome or expensive?

ANSWER: \_\_\_\_\_ Yes \_\_\_\_\_ No

[If your answer is “yes” go to Question No. 9. If your answer is “no” then Plaintiff is not entitled to damages on his tortious interference with contract claim. If you answered “yes” to Question No. 5, go to Question No. 9. If you answered “no” to Question No. 5, sign and date the verdict form below.]

### **DAMAGES**

**Question No. 9:** Did Defendant Coop prove by a preponderance of the evidence that Plaintiff Gary Boland was at fault for failing to mitigate his damages as set forth in Jury Instruction No. \_\_\_\_\_?

ANSWER: \_\_\_\_\_ Yes \_\_\_\_\_ No

[If your answer is “yes” go to Question No. 10. If your answer is “no” go to Question No. 11.]

**Question No. 10:** Using 100% as the total combined fault of plaintiff and defendant which was a cause of plaintiff's damage, what percentage of such combined fault do you assign to the plaintiff and what percentage of such combined fault do you assign to the defendant?

ANSWER: Plaintiff \_\_\_\_\_ %  
Defendant \_\_\_\_\_ %  
TOTAL 100%

[If you find Plaintiff to be more than 50% at fault, do not answer Question No. 11 and sign and date the verdict form. If you, find Plaintiff was less than 50% at fault, then answer Question No. 11.]

**Question No. 11:** State the amount of damages sustained by Plaintiff Gary Boland by Defendant Coop's fault as to each of the following items of damage. Do not take into consideration any reduction of damages due to Gary Boland's fault. 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's fault enter 0 for that item.

1. Lost Benefit of the Bargain for First Right of Refusal	\$ _____
2.	\$ _____
3.	\$ _____
4.	\$ _____
TOTAL (add the separate items of damage)	\$ _____

[When you have entered the items of damage, sign and date the Verdict Form.]

**Please sign and date the Verdict Form on the lines provided below.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson

**Authority:**

Iowa Jury Instruction 300.4 Verdict - Single Plaintiff - Single Defendant - Cases Governed By Chapter 668. (MODIFIED)

**48B: BOLAND'S PROPOSED INSTRUCTION.**

None.

JURY INSTRUCTION 49: SPECIAL INTERROGATORIES - PUNITIVE DAMAGES

**49A: COOP'S PROPOSED INSTRUCTION.**

None

**49B: BOLAND'S PROPOSED INSTRUCTION.**

Question No. 1: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of the defendant constituted willful and wanton disregard for the rights or safety of another?

Answer "Yes" or "No"

ANSWER:

[If your answer to Question No. 1 is "No" do not answer Question Nos. 2 and 3]

Question No. 2: What amount of punitive damages, if any, do you award?

ANSWER:

[If your answer to Question No. 2 is "None" do not answer Question No. 3]

Question No. 3: Was the conduct of the defendant directed specifically at Gary Boland?

Answer "Yes" or "No"

ANSWER:

Question No. 5: What amount of punitive damages, if any, do you award against the Coop?

ANSWER:

**Authority:**

Iowa Jury Instruction 210.2 (NOT MODIFIED)