

UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ANNIE OAKLEY ENTERPRISES, :	:	
INC.,	:	
	:	
Plaintiff,	:	CIVIL NO. 4-98-CV-20120
	:	
vs.	:	
	:	
CONTINENTAL MANUFACTURING	:	FINAL JURY INSTRUCTIONS
CHEMIST, INC., d/b/a CONTINENTAL	:	
LABORATORIES,	:	
	:	
Defendant.	:	

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INSTRUCTION NO. 1

INTRODUCTION

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. Remember to review the preliminary instructions in addition to these instructions. You must not single out some instructions and ignore others because all are important. This is true even though those I gave you at the beginning of or during the trial are not repeated here.

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.

INSTRUCTION NO. 2

The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct.

“Substantial” means the party’s conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

INSTRUCTION NO. 3

The plaintiff has alleged the defendant breached the contract. To recover, the plaintiff must prove all of the following propositions:

1. The terms of the contract.
2. The defendant has breached the contract.
3. The amount of damages proximately caused by the defendant.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

INSTRUCTION NO. 4

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

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 that gives a reasonable, effective meaning to all terms is preferred to an interpretation that 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 the person were acquainted with the circumstances both before and at the time the contract was made.
6. Ambiguous language in a written contract is interpreted against the party who selected it.
7. Where general and specific terms in the contract refer to the same subject, the specific terms control.

INSTRUCTION NO. 5

The measure of damages for a breach of contract is an amount that would place the plaintiff in as good a position as it would have enjoyed if the contract had been performed.

The damages you award for breach of contract must be foreseeable, or have been reasonably foreseen, at the time the parties entered into the contract.

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

1. Consequential damages the plaintiff incurred.
2. Past lost profits.
3. Future lost profits.

INSTRUCTION NO. 6

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. 7

I am giving you a verdict form. Once you have finished responding to the issues in the verdict form, the form should be signed by the person you have selected to serve as presiding juror.

Your response to each of the special interrogatories must represent the considered judgment of each juror. If you deliberate for over six hours and are unable to arrive at a unanimous verdict, seven of the eight of you may agree upon and return a verdict; it must be signed by the seven of eight of you who agree on the verdict. If your foreperson is a dissenting juror, he or she should not sign the verdict. When you have agreed upon an appropriately signed verdict, you will inform the Court Security Officer outside the room.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of the other jurors or for the mere purpose of returning a verdict.

INSTRUCTION NO. 8

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members to act as presiding juror. The person so elected is responsible for the orderly, proper, and free discussion of the issues by any juror who wishes to express his or her views. He or she will supervise the balloting and sign the form or forms of verdict that are in accord with your decision and will also sign any written inquiries addressed to the Court. Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally fully covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court.

If you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone – including me – how your votes stand numerically.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering a jury room, to announce an emphatic opinion in a case or a determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans. You are judges -- judges of the facts. Your sole interest is to ascertain the truth.

Dated at _____ a.m. on this _____ day of October, 1999.

CELESTE F. BREMER
UNITED STATES MAGISTRATE JUDGE

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CONTINENTAL MANUFACTURING :
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LABORATORIES, :

Defendant. :

CIVIL NO. 4-98-CV-20120

SPECIAL VERDICT FORM

Question No. 1: Do you find that the defendant breached the contract with the plaintiff?
(Answer "yes" or "no").

Answer: _____ (If you answer "no," do not answer Question 2).

Question No. 2: Do you find the defendant's breach of the contract proximately
caused the plaintiff's damages? (Answer "yes" or "no").

Answer: _____

Question No. 3: Answer if, and only if, you answered "yes" to questions 1 and 2. State the amount of damages sustained by the plaintiff for each of the following items of damage. If the plaintiff failed to prove any item of damage, enter "0" for that item.

Answer:

Consequential damages	_____
Past lost profits	_____
Future lost profits	_____
 TOTAL	 _____

We reach this special verdict on the _____ day of October, 1999, at the hour of _____ o'clock, __ m.

PRESIDING JUROR*

*To be signed only if verdict is unanimous.

Juror**

**To be signed by the seven out of eight Jurors concurring, if the verdict is not unanimous.