

**IN THE IOWA DISTRICT COURT FOR STORY COUNTY**

**WILTCHER INDUSTRIES, INC.,**

**Plaintiff,**

**vs.**

**ASI CONTRACTING, INC.,**

**Defendants.**

**CASE NO. LACV051321**

**DEFENDANT'S PROPOSED JURY  
INSTRUCTIONS**

**COMES NOW**, Defendant, ASI Contracting, Inc., by and through the undersigned counsel, and submits the following proposed jury instructions:

Respectfully submitted,

By:



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**PROOF OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on April 6, 2021.

By: ☐ US Mail ☐ Fax  
☐ Hand Delivered ☐ EMAIL  
☐ Federal Express ☒ EDMS

Signature



**INSTRUCTION NO. \_\_\_\_\_**

In this case, Plaintiff Wiltcher Industries, Inc. claims that Defendant ASI Contracting, Inc. has failed to pay for the manufacturing and delivery of shower kits, pans and wall systems for a construction project at Iowa State University. ASI Contracting, Inc. denies that any money is due and owing to Wiltcher Industries, Inc. and has asserted affirmative defenses. ASI Contracting, Inc. has also filed a counterclaim against Wiltcher Industries, Inc. alleging that the shower kits, pans and wall systems were not properly manufactured and were untimely delivered causing ASI Contracting Inc. damages. Wiltcher Industries, Inc. has denied that any money is due to ASI Contracting, Inc. and has asserted affirmative defenses.

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.

**UNIFORM INSTRUCTION 100.1**

**INSTRUCTION NO. \_\_\_\_\_**

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.

**UNIFORM INSTRUCTION 100.2**

**INSTRUCTION NO. \_\_\_\_\_**

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.

**UNIFORM INSTRUCTION NO. 100.3**

**INSTRUCTION NO. \_\_\_\_\_**

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

**UNIFORM INSTRUCTION NO. 100.4**

**INSTRUCTION NO. \_\_\_\_\_**

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.

**UNIFORM INSTRUCTION NO. 100.9**

**INSTRUCTION NO. \_\_\_\_\_**

You have heard evidence claiming a witness 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.

**UNIFORM INSTRUCTION NO. 100.13**



**INSTRUCTION NO. \_\_\_\_\_**

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

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

**UNIFORM INSTRUCTION NO. 100.14**

**INSTRUCTION NO. \_\_\_\_\_**

You have heard evidence claiming a 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 the party had made it under oath during the trial.

If you find such a statement was made and was inconsistent with party's testimony during the trial you may also use the statement as a basis for disregarding all or any part of a party's testimony during the trial but you are not required to do so. You should not disregard the party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

**UNIFORM INSTRUCTION NO. 100.15**

**INSTRUCTION NO. \_\_\_\_\_**

The fact that the parties to this litigation are corporations 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.

**UNIFORM INSTRUCTION NO. 100.20 (modified)**

**INSTRUCTION NO. \_\_\_\_\_**

A party must prove all of the following propositions for their claim of breaches of contract:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The terms of the contract.
4. The party asserting a breach of contract have done what the contract requires.
5. The other party has breached the contract.
6. The amount of any damage the party has caused.

If a party has failed to prove any of these propositions, that party cannot recover damages. If a party has proved all of these propositions, you will consider the affirmative defenses as explained in Instruction Nos. \_\_\_\_\_.

**UNIFORM INSTRUCTION NO. 2400.1**

**INSTRUCTION NO. \_\_\_\_\_**

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.

**UNIFORM INSTRUCTION NO. 2400.3**

**INSTRUCTION NO. \_\_\_\_\_**

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.

**UNIFORM INSTRUCTION NO. 2400.5**

**INSTRUCTION NO. \_\_\_\_\_**

When a party 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.

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

1. The extent to which the other party will be deprived of the benefit which the other party reasonably expected.
2. The extent to which the other party can be adequately compensated for the part of that benefit of which the other party will be deprived.
3. The extent to which the party will suffer forfeiture.
4. The likelihood that the party will cure the failure, taking account of all the circumstances including any reasonable assurances.
5. The extent to which the behavior of the party is in line with standards of good faith and fair dealing.

**UNIFORM INSTRUCTION NO. 2400.7**

**INSTRUCTION NO. \_\_\_\_\_**

As a defense to the Wiltcher's claims, the issue for your consideration is whether ASI are entitled to setoff against any amounts they owe to Wiltcher by amounts owed by Wiltcher to ASI. Setoff is the right of a party in a contract dispute to use any claims it has against the other party as full or partial satisfaction of the amounts owed. If you find that Wiltcher rendered substantial performance under the contract, ASI must pay to Wiltcher the full contract price less payments previously made, subject to a setoff for:

(1) any amounts paid to a third party to complete the contract against the amount due to Wiltcher; and

(2) any damages sustained by ASI as a result of defects in Wiltcher's performance measured by the reasonable cost of construction and completion in accordance with the contract if completion in accordance with the contract is possible and does not involve unreasonable economic waste.

If the preponderance of the evidence supports the defense of set off, the claim of Wiltchers should be reduced by the amount you determine and your verdict on this defense should be for ASI. If, however, preponderance of the evidence does not support the defense of ASI on this issue you shall consider the additional defenses.

**AMERICAN BAR ASSOCIATION: MODEL JURY INSTRUCTIONS:  
CONSTRUCTION LITIGATION, SECOND EDITION § 15.15 OWNER SETOFF PG.  
292-293. (MODIFIED)**

***Lewis Elec. Co. v. Miller*, 791 N.W.2d 691 (Iowa 2010)**



**INSTRUCTION NO. \_\_\_\_\_**

The parties each claim that the other has failed to mitigate their damages.

A party has a duty to reduce, minimize or limit their damages. However, a party has no duty to do something that is unreasonable under the circumstances.

To prove a party's claim of failure to mitigate, the party must prove all of the following:

1. There was something the party could do to mitigate their damages;
2. Requiring the party to do so was reasonable under the circumstances;
3. The party acted unreasonable in failing to undertake the mitigating activity; and
4. The party's failure to undertake the mitigating activity caused an identifiable portion of the party's damages.

If the preponderance of the evidence supports this issue, the claim of the party should be reduced by the amount you determine and your verdict on this defense should be for the other party. If, however, preponderance of the evidence does not support the defense of the party on this issue you shall consider the additional defenses.

**UNIFORM INSTRUCTION NO. 2400.7**

**INSTRUCTION NO. \_\_\_\_\_**

The measure of damages for breach of a contract is an amount that would place a party in as good a position as they would have enjoyed if the contract had been performed or the representations had been true.

The damages you award for breach of contract and fraud must be foreseeable or have been reasonably foreseen at the time the parties entered into the contract and the representation was made.

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

1. The amount of money due and owing pursuant to the parties' contract.
2. A party has a right to damages based on the expectation of completing the contract as follows:
  - a. The loss in the value to the party caused by the failure to perform, plus
  - b. Any other loss, including incidental or consequential loss, caused by the breach, less
  - c. Any cost or other loss that was avoided by not having to perform.
3. If the loss in value of the provided construction is not proved with sufficient certainty, a party may recover damages based upon
  - a. The reasonable cost of completing performance or of remedying the defects if that cost is not clearly disproportionate to the probable loss in value.

**UNIFORM INSTRUCTION NO. 220.1 (modified)**

**INSTRUCTION NO. \_\_\_\_\_**

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.

**UNIFORM INSTRUCTION NO. 200.38**

**INSTRUCTION NO. \_\_\_\_\_**

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.

**UNIFORM INSTRUCTION NO. 100.18**

**INSTRUCTION NO. \_\_\_\_\_**

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.

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

**UNIFORM INSTRUCTION NO. 100.23**

**INSTRUCTION NO. \_\_\_\_\_**

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.

**UNIFORM INSTRUCTION NO. 100.21**

**IN THE IOWA DISTRICT COURT FOR STORY COUNTY**

**WILTCHER INDUSTRIES, INC.,**

**Plaintiff,**

**vs.**

**ASI CONTRACTING, INC.,**

**Defendants.**

**CASE NO. LACV051321**

**DEFENDANT'S PROPOSED VERDICT  
FORM**

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

**Question No. 1:** Did Wiltcher Industries, Inc. prove their breach of contract claim as defined in Instruction No. \_\_\_\_\_?

Answer "yes" or "no."

Answer: \_\_\_\_\_

**Question No. 2:** Did Wiltcher Industries, Inc. prove their unjust enrichment claim as defined in Instruction No. \_\_\_\_\_?

Answer "yes" or "no."

Answer: \_\_\_\_\_

**Question No. 3:** Did Wiltcher Industries, Inc. prove their promissory estoppel claim as defined in Instruction No. \_\_\_\_\_?

Answer "yes" or "no."

Answer: \_\_\_\_\_

If you answered "Yes" to Question No. 1, No. 2, or No. 3, No. 4 or No. 5 please answer Question No. 4. If you answered "No" to Question No.1, No. 2, and No. 3 please proceed to Question No. 5.

**Question No. 4:** Please provide what amount of damages, if any, do you award against ASI for Wiltcher's claims:

Breach of Contract:

\_\_\_\_\_

Unjust Enrichment: \_\_\_\_\_

Promissory Estoppel: \_\_\_\_\_

**Question No. 5:** Did ASI prove their breach of contract claim as defined in Instruction No. \_\_\_\_\_?

Answer “yes” or “no.”

Answer: \_\_\_\_\_

[If your answer is “Yes,” proceed to Question No.6. If your answer is “No,” do not answer any other questions.]

**Question No. 6:** Please provide what amount of damages, if any, do you award against Wiltcher for ASI’s breach of contract claim:

Answer: \_\_\_\_\_

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

\*To be signed only if verdict is unanimous.

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

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

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

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Juror\*\*

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

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

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

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