

IN THE IOWA DISTRICT COURT IN AND FOR STORY COUNTY

| | | |
|----------------------------|---|---------------------------|
| WILTCHER INDUSTRIES, INC., |) | LAW NO. LACV051321 |
| |) | |
| Plaintiff, |) | PLAINTIFF'S PROPOSED JURY |
| |) | INSTRUCTIONS AND |
| vs. |) | VERDICT FORMS |
| |) | |
| ASI CONTRACTING, INC., |) | |
| |) | |
| Defendant. |) | |

COMES NOW the Plaintiff, by and through its undersigned attorneys, and hereby submits the following proposed jury instructions and verdict forms to be submitted to the jury for their consideration in this matter. Plaintiff reserves the right to supplement the proposed jury instructions, prior to the time they are given to the jury, with such additional or different instructions as may be necessary, based upon testimony and exhibits introduced at said trial, and any other factors which may affect the appropriate form of the jury instructions or forms of verdict.

Respectfully submitted,

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Thomas C. Verhulst #AT0008125

Copy to:
Matthew G. Sease

Certificate 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 this pleading on: April 6, 2021

By: ☐ U.S. Mail ☐ Fax
☐ Hand Delivered ☐ Email
☐ Electronically Mailed by District Court ☒ Electronically Mailed by CM/ECF

Signature

D. Cunningham

Proposed Jury Instruction 1

STATEMENT OF THE CASE

Members of the Jury:

In this case, Plaintiff Wiltcher Industries, Inc. claims that Defendant ASI Contracting, Inc. breached its contracts with Plaintiff by failing to fully pay Plaintiff for the services and product provided to Defendant for bathroom renovation projects at Iowa State University. Plaintiff also claims that Defendant breached oral and written promises with Plaintiff for the manufacture and delivery of shower kit products for the renovation projects. Plaintiff also claims that Defendant has been unjustly enriched by receiving the manufactured products from Plaintiff for these renovation projects while failing to fully pay for said products and delivery charges of the Plaintiff.

Defendant denies Plaintiff's claims and that Plaintiff is entitled to damages from the Defendant. Defendant also counterclaims that Plaintiff breached its contracts with Defendant causing damages to the Defendant. Plaintiff denies Defendant's counterclaim and that Defendant is entitled to damages from the Plaintiff.

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 100.1

Proposed Jury Instruction 2

DUTIES OF JUDGE AND JURY, INSTRUCTIONS AS A 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.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

Authority: Iowa Civil Jury Instruction 100.2

Proposed Jury Instruction 3

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 100.3

Proposed Jury Instruction 4

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. deposition testimony, 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

Proposed Jury Instruction 5

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 100.5

Proposed Jury Instruction 6

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 100.9

Proposed Jury Instruction 6

CONTRADICTION STATEMENT, NON-PARTY, WITNESS UNDER OATH

You have heard the evidence claiming _____ (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.

Authority: Iowa Civil Jury Instruction 100.13

Proposed Jury Instruction No. 7

CONTRADICTORY STATEMENTS, NON-PARTY, WITNESS UNDER OATH

You have heard evidence claiming _____ (witness) made statements before this trial while under oath which were inconsistent with what _____ (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 _____ (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

Proposed Jury Instruction No. 8

STATEMENTS BY A PARTY OPPONENT.

You have heard evidence claiming representatives of Defendant ASI Contracting made statements before this trial while under oath and while not under oath.

If you find such statements were made, you may regard the statement as evidence in this case the same as if they had made it under oath during the trial.

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

Authority: Iowa Civil Jury Instruction 100.15

Proposed Jury Instruction No. 9

CORPORATE PARTY.

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 100.20

Proposed Jury Instruction No. 10

CAUTIONARY INSTRUCTION - 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 100.21

Proposed Jury Instruction No. 11

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 100.23

Proposed Jury Instruction No. 12

ESSENTIALS FOR RECOVERY - CONTRACT CLAIM.

As to Plaintiff's contract claims against the Defendant, Plaintiff must prove all of the following propositions:

1. The parties were capable of contracting.
2. The existence of a contract.
3. The consideration.
4. The terms of the contract.
5. The plaintiff has done what the contract requires.
6. The defendant has breached the contract.
7. The amount of any damage defendant has caused.

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

Authority: Iowa Civil Jury Instruction 2400.1

Proposed Jury Instruction No. 13

COMPETENCY.

A person is capable of making a contract unless the person lacked sufficient mental capacity to understand it.

Authority: Iowa Civil Jury Instruction 2400.2

Proposed Jury Instruction No. 14

EXISTENCE OF A CONTRACT.

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

Proposed Jury Instruction No. 15

CONSIDERATION

“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

Proposed Jury Instruction No. 16

TERMS-INTERPRETATION.

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

Proposed Jury Instruction No. 17

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

Proposed Jury Instruction No. 18

PERFORMANCE BY PLAINTIFF

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.

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 counterclaim 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 dealing.

Authority: Iowa Civil Jury Instruction 2400.7

Proposed Jury Instruction No. 19

ESSENTIALS FOR RECOVERY - PROMISSORY ESTOPPEL CLAIM

As to Plaintiff's promissory estoppel claim against the Defendant, Plaintiff must prove all of the following propositions:

1. That Defendant made a clear and definite promise to the Plaintiff.
2. That the promise was made with Defendant's clear understanding that the Plaintiff was seeking assurance upon which Plaintiff could rely and without which it would not act.
3. That Plaintiff acted to its substantial detriment in reasonable reliance on the promise.
4. That an injustice can only be avoided by enforcement of the promise.

If the Plaintiff has failed to prove any of these propositions, the Plaintiff is not entitled to damages on its promissory estoppel claim.

If the Plaintiff has proved all of these propositions, the Plaintiff is entitled to damages in some amount based upon a consideration of those items of damages set forth in Jury Instruction No.

21.

Authority: Kunde v. Estate of Bowman, 920 N.W. 2d 803, 810 (Iowa 2018).
Schoff v. Combined Ins. Co. of America, 604 N.W. 2d 43, 49 (Iowa 1999).

Proposed Jury Instruction No. 20

ESSENTIALS FOR RECOVERY - UNJUST ENRICHMENT

As to Plaintiff's unjust enrichment claim against Defendant, Plaintiff must prove all of the following propositions:

1. That Defendant was enriched by the receipt of a benefit from Plaintiff.
2. That the enrichment was at the expense of the Plaintiff.
3. That it is unjust to allow the Defendant to retain the benefit under the circumstances.

If the Plaintiff has failed to prove any of these propositions, the Plaintiff is not entitled to damages on its unjust enrichment claim.

If the Plaintiff has proved all of these propositions, the Plaintiff is entitled to damages in some amount based upon a consideration of those items of damages set forth in Jury Instruction No.

21.

Authority: State ex rel. Palmer v. Unisys Corp., 637 N.W.2d 142, 154-55 (Iowa 2001).
Nepstad Custom Homes Co. v. Krull, 527 N.W. 2d 402, 407 (Iowa App. 1994).

Proposed Jury Instruction No. 21

BREACH OF CONTRACT - EXPECTATION INTEREST

The measure of damages for breach of a contract, promissory estoppel or unjust enrichment is an amount that would place Plaintiff in as good a position as Plaintiff would have enjoyed if the contract or promise had been performed.

The damages you award for breach of contract, promissory estoppel or unjust enrichment must be foreseeable or have been reasonably foreseen at the time the parties entered into the contract or the promises were made by the Defendant. In your consideration of the damages, you may consider the following:

1. The set contract prices.
2. Any and all extra delivery charges for expedited or partial deliveries requested by Defendant of Plaintiff.
3. Any and all extra manufacturing and delivery charges for replacement products requested of Plaintiff by Defendant.

Authority: Iowa Civil Jury Instruction 220.1

Kunde v. Estate of Bowman, 920 N.W. 2d 803, 810 (Iowa 2018).

Schoff v. Combined Ins. Co. of America, 604 N.W. 2d 43, 49 (Iowa 1999).

State ex rel. Palmer v. Unisys Corp., 637 N.W.2d 142, 154-55 (Iowa 2001).

Nepstad Custom Homes Co. v. Krull, 527 N.W. 2d 402, 407 (Iowa App. 1994).

Proposed Jury Instruction No. 22

RETURN OF VERDICT - FORMS OF VERDICT.

I am giving you 4 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, 2 of the verdicts must be signed by your foreman or forewoman.

After deliberating for six hours from _____ to _____ 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 verdicts must be signed by all seven jurors who agree.

When you have agreed upon the verdicts and appropriately signed them, tell the Court Attendant.

Authority: Iowa Civil Jury Instruction 300.1

Proposed Jury Instruction No. 23

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

IN THE IOWA DISTRICT COURT IN AND FOR STORY COUNTY

| | | |
|----------------------------|---|-----------------------------|
| WILTCHER INDUSTRIES, INC., |) | LAW NO. LACV051321 |
| |) | |
| Plaintiff, |) | PROPOSED VERDICT FORM NO. 1 |
| |) | |
| vs. |) | |
| |) | |
| ASI CONTRACTING, INC., |) | |
| |) | |
| Defendant. |) | |

As to Plaintiff's claims against Defendant, we, the jury, find in favor of the Plaintiff and fix the amount of its 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

IN THE IOWA DISTRICT COURT IN AND FOR STORY COUNTY

| | | |
|----------------------------|---|-----------------------------|
| WILTCHER INDUSTRIES, INC., |) | LAW NO. LACV051321 |
| |) | |
| Plaintiff, |) | PROPOSED VERDICT FORM NO. 2 |
| |) | |
| vs. |) | |
| |) | |
| ASI CONTRACTING, INC., |) | |
| |) | |
| Defendant. |) | |

As to Plaintiff's claims against the Defendant, 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**

Authority: Iowa Civil Jury Instruction 300.3

IN THE IOWA DISTRICT COURT IN AND FOR STORY COUNTY

| | | |
|----------------------------|---|-----------------------------|
| WILTCHER INDUSTRIES, INC., |) | LAW NO. LACV051321 |
| |) | |
| Plaintiff, |) | PROPOSED VERDICT FORM NO. 3 |
| |) | |
| vs. |) | |
| |) | |
| ASI CONTRACTING, INC., |) | |
| |) | |
| Defendant. |) | |

As to Defendant's counterclaim against the Plaintiff, we, the jury, find in favor of the Defendant and fix the amount of its recovery against the Plaintiff at _____ dollars.

Foreman or Forewoman*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Authority: Iowa Civil Jury Instruction 300.3

IN THE IOWA DISTRICT COURT IN AND FOR STORY COUNTY

| | | |
|----------------------------|---|-----------------------------|
| WILTCHER INDUSTRIES, INC., |) | LAW NO. LACV051321 |
| |) | |
| Plaintiff, |) | PROPOSED VERDICT FORM NO. 4 |
| |) | |
| vs. |) | |
| |) | |
| ASI CONTRACTING, INC., |) | |
| |) | |
| Defendant. |) | |

As to Defendant's counterclaim against the Plaintiff, we, the jury, find in favor of the Plaintiff and against the Defendant.

Foreman or Forewoman*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Authority: Iowa Civil Jury Instruction 300.3