

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

**LAKES GAS CO.,**

**Plaintiff,**

**vs.**

**D & J FEED SERVICE, INC.;  
CAMPBELL OIL CO., INC.;  
JOHNSON OIL & L.P. CO.; and  
HANSEN GAS & HARDWARE CO.,**

**Defendants.**

**No. C11-1013**

**FINAL JURY INSTRUCTIONS**

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**FINAL INSTRUCTION NO. 1**

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

Neither in these instructions nor in any ruling, action, or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

**FINAL INSTRUCTION NO. 2**

The fact that the parties 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.

Since a corporation can act only through its officers, employees, or other agents, any act of an officer, employee, or other agent of a party, in the performance of that person's duties, is held in law to be an act of that party.

**FINAL INSTRUCTION NO. 3**

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claims rely upon that fact. The party who has the burden of proving a fact must prove it by the greater weight or preponderance of the evidence. To prove something by the greater weight or preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved.

The greater weight or preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

**FINAL INSTRUCTION NO. 4**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness' intelligence, the opportunity a witness had to see or hear the things testified about, a witness' memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory, or an intentional falsehood; and that may depend on whether it has to do with an important fact or only a small detail.

**FINAL INSTRUCTION NO. 5**

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.

**FINAL INSTRUCTION NO. 6**

First, Lakes claims each of the Defendants breached an agreement to purchase liquid propane (“LP”) gas. To recover on its breach of contract claim, Lakes must prove all of the following propositions:

1. The existence of a contract.
2. The terms of the contract.
3. Lakes performed on the contracts by delivering the gas.
4. The Defendants breached their respective contracts by failing to pay for the gas.
5. The amount of any damage the Defendants caused.

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

**FINAL INSTRUCTION NO. 7**

**Regarding element No. 1 of Instruction No. 6,** Lakes claims an oral contract existed between it and each of the Defendants. To establish a contract there must be a meeting of the minds. A meeting of minds occurs when the parties, or an agent acting on their behalf, 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 and their agents, together with all reasonable inferences you may draw from the surrounding circumstances.

Lakes asserts David Stevenson, acting as an agent for each of the Defendants, ordered the delivery of LP gas on behalf of each Defendant. Lakes has the burden of showing Stevenson was an agent for the Defendants, and acted within the scope of his authority as an agent. An agent may have “actual authority” or “apparent authority.” For Stevenson to have “actual authority,” the Defendants must have authorized Stevenson to enter into the PTOs on their behalf. For Stevenson to have “apparent authority,” the Defendants must have acted in such a manner as to lead Lakes to believe that Stevenson had authority to enter into PTOs on the Defendants’ behalf.

**FINAL INSTRUCTION NO. 8**

**Regarding element No. 2 of Instruction No. 6, 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.

**In determining the terms of the contract you may also consider the following:**

1. The express terms of the parties' agreement.
2. The parties' course of performance.
3. The usage of trade.

The parties' "course of performance" is shown by their statements, acts or conduct after the contract was made. "Usage of trade" refers to a practice or method of dealing

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**FINAL INSTRUCTION NO. 8 (Cont'd)**

having such regularity of observance within a trade as to justify an expectation that it will be observed with respect to the transaction in question.

The express terms or words of the agreement are the most important evidence of the parties' intentions at the time they entered into the contract. If you find that the three factors are not consistent, then with respect to the weight to be given to each factor: (1) the express terms are given more weight than the course of performance and usage of trade; and (2) course of performance is given more weight than the usage of trade.

**FINAL INSTRUCTION NO. 9**

**Regarding element No. 3 of Instruction No. 6, Lakes alleges that it delivered the gas, and Defendant accepted the gas by selling it to Summit Propane. Acceptance of goods under a contract occurs when the buyer does any act inconsistent with the seller's ownership.**

**FINAL INSTRUCTION NO. 10**

**Regarding element No. 4 of Instruction No. 6, a breach of contract occurs when a party fails to perform a term of the contract. It does not matter whether the breach is purposeful or inadvertent.**

**FINAL INSTRUCTION NO. 11**

**Regarding element No. 5 of Instruction No. 6, if you find Lakes is entitled to recover on its breach of contract claim, then the measure of damages is an amount that would place Lakes 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 arriving at the amount of damages, you cannot establish a figure by taking down the estimate of each juror as to damages and agreeing in advance that the average of those estimates shall be your award of damages. Rather, you must use your sound judgment based upon an impartial consideration of the evidence.**

**FINAL INSTRUCTION NO. 12**

Next, Lakes claims each of the Defendants conspired with David Stevenson to defraud Lakes. In order to recover for the claim of conspiracy, Lakes must prove all of the following propositions:

1. David Stevenson committed the wrong of conversion or fraud, as defined in **Instruction No. 14.**

2. One or more of the Defendants participated in a conspiracy with David Stevenson to wrongfully convert Lakes' gas, or to defraud Lakes.

3. The nature and extent of damage.

If Lakes has failed to prove any of these propositions, then Lakes is not entitled to damages on its conspiracy claim. If Lakes has proved all of these propositions, then Lakes is entitled to damages in some amount.

**FINAL INSTRUCTION NO. 13**

Finally, Lakes claims each of the Defendants aided and abetted David Stevenson in wrongfully converting property or defrauding Lakes. In order to recover for the claim of aiding and abetting, Lakes must prove the following propositions:

1. David Stevenson committed the wrong of conversion or fraud as defined in **Instruction No. 14.**

2. One or more of the Defendants knew of the wrongful conversion or fraud by David Stevenson.

3. One or more of the Defendants gave substantial assistance or encouragement to David Stevenson in the commission of the conversion of gas, or fraud.

4. The nature and extent of damage.

If Lakes has failed to prove any of these propositions, then Lakes is not entitled to damages on its aiding and abetting claim. If Lakes has proved all of these propositions, then Lakes is entitled to damages in some amount.

**FINAL INSTRUCTION NO. 14**

**Regarding element No. 1 of Instruction Nos. 12 and 13, David Stevenson committed the wrong of conversion if Lakes has proven (1) Lakes had an ownership or possessory right to LP gas which was greater than Stevenson's right, (2) Stevenson exercised control over the LP gas which was inconsistent with, or in derogation of, Lakes' possessory rights, and (3) Lakes suffered damages as a result of Stevenson's wrongful actions.**

**David Stevenson committed fraud if Lakes has proven (1) Stevenson made a material false representation to Lakes, (2) Stevenson knew the representation was false, (3) Stevenson intended to deceive Lakes, (4) Lakes acted in reliance on Stevenson's representation, and (5) Lakes suffered damages as a result of Stevenson's fraud.**

**FINAL INSTRUCTION NO. 15**

**Regarding element No. 2 of Instruction No. 12**, a conspiracy is an agreement of two or more persons to commit a wrong against another. The agreement can be oral or written, informal or formal, and need not be detailed. The agreement need not be expressed in words and may be implied and understood to exist from the conduct itself. It may be proved by direct or circumstantial evidence. Merely because two or more persons associate with each other, or meet to discuss common interests or goals does not, by itself, establish a conspiracy.

A person participates in a conspiracy when the person joins the agreement with the intention to accomplish the wrongful act. A participant need not know all the details of the agreement nor all of the other participants. One who innocently furthers wrongful conduct by another does not participate in a conspiracy.

**FINAL INSTRUCTION NO. 16**

**Regarding element No. 3 of Instruction No. 13, in determining whether the assistance or encouragement given by a Defendant, if any, was “substantial,” you may consider the nature of the act encouraged, the amount of assistance given by a Defendant, the relationship between Stevenson and a Defendant, and the state of mind of a Defendant. The assistance of or participation by a Defendant may be so slight that it is not liable for Stevenson’s acts.**

**FINAL INSTRUCTION NO. 17**

**Regarding element No. 3 of Instruction No. 12 and element No. 4 of Instruction No. 13, if you find Lakes is entitled to recover on its conspiracy claim or aiding and abetting claim, then the measure of damages is an amount that will reimburse Lakes for the loss caused by the wrongful conversion of LP gas or Stevenson's fraud, and will place Lakes in as good a position as if the wrongful acts had not occurred.**

**FINAL INSTRUCTION NO. 18**

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

*Third*, 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.

*Fourth*, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

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**FINAL INSTRUCTION NO. 18 (Cont'd)**

*Finally*, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the court security officer that you are ready to return to the courtroom.

DATED this 10<sup>th</sup> day of January, 2013.



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JON STUART SCOLES  
CHIEF MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA

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SEPARATION INSTRUCTION

Ladies and Gentlemen:

You are further instructed that if you have not reached a verdict by 5:00 p.m. on this date, then you should separate and return at 9:00 a.m. tomorrow morning to resume your deliberations. If you separate and return tomorrow morning for additional deliberation, then during the separation, you are directed to follow the Instructions previously given. That is, you must not discuss this case with anyone, including family members, until after the Jury's verdict has been received by the Court. If there should be any newspaper, radio, or television accounts of the progress of this trial, you are forbidden by law to read, listen, or watch them.

DATED this 10<sup>th</sup> day of January, 2013.

  
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JON STUART SCOLES  
CHIEF MAGISTRATE JUDGE  
NORTHERN DISTRICT OF IOWA