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

MIDWEST DIRECT LOGISTICS, INC. Plaintiff, vs. TWIN CITY TANNING WATERLOO, LLC, Defendant.	No. 15-CV-2013-LRR **JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

In the next few moments, I am going to give you instructions about this case and about your duties as jurors. I will also give you additional instructions at a later time. Unless I specifically tell you otherwise, all instructions—both those I give you now and those I give you later—are equally binding on you and must be followed.

The instructions I am about to give you now are in writing and will be available to you in the jury room.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

This is a civil case brought by Plaintiff Midwest Direct Logistics, Inc. against Defendant Twin City Tanning Waterloo, LLC. Twin City Tanning Waterloo operates a cattle hide processing plant in Waterloo, Iowa. Midwest provided for a number of shipments of cattle hide trimmings to be picked up at Twin City Tanning Waterloo's plant and delivered by truck to a location in Massachusetts. Midwest made these shipments at the direction of a company called Atlantic Trading Corporation, located in Delaware. Midwest sought payment for the shipments from Atlantic. When Atlantic was unable to pay the freight charges, Midwest brought this action to obtain payment from Twin City Tanning Waterloo. Midwest alleges that Twin City Tanning Waterloo breached express contracts and implied contracts. Both claims arise out of Midwest's business as a company that provides transportation services. Twin City Tanning Waterloo denies that it breached any contract and denies any liability to Midwest.

This statement has been given to you by the court solely to inform you, by way of summary, of the respective claims of the parties. Neither the claims made nor this instruction are to be considered by you as evidence in this case.

INSTRUCTION NO. 3

It will be your duty to decide from the evidence whether the plaintiff is entitled to verdicts against the defendant. From the evidence you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdicts. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdicts should be.

INSTRUCTION NO. 4

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses, documents and other things received as exhibits and any facts that have been stipulated, that is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts that are established by the evidence in the case.

Certain things are not evidence. I shall list those things for you now:

1. Statements, arguments, questions and comments by the lawyers representing the parties in the case are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might be.
4. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
5. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

During the trial, documents and objects may be referred to but not admitted into evidence. In such a case, these items will not be available to you in the jury room during deliberations.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when this occurs, and instruct you on the purposes for which the item can and cannot be used.

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who shall testify in this case. 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 of any witness to believe, consider the witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education and experience; any motives the witness might have for testifying a certain way; how the witness acted while testifying; whether the witness said something different at an earlier time; whether the witness's testimony sounded reasonable; and whether or to what extent the witness's testimony is consistent with other evidence that you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory or an intentional falsehood; this may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 7

In the previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached."

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

INSTRUCTION NO. 8

You may hear evidence claiming that certain witnesses made statements while under oath before this trial which are inconsistent with what those witnesses may say in this trial. If you find that these prior statements were made and are inconsistent with statements that may be made at trial, 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 prior statements to help you decide if you believe the witness. You may disregard all or any part of the testimony if you find that 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.

INSTRUCTION NO. 9

You may hear evidence claiming that a party made statements before this trial either while under oath or 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 that party's testimony during the trial, you may also use the statement as a basis for disregarding all or part of the 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.

INSTRUCTION NO. 10

Exhibits will be admitted into evidence and are to be considered along with all the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they are received by you.

Documents referred to but not admitted into evidence will not be available to you during deliberations.

INSTRUCTION NO. 11

Certain charts and summaries may be shown to you merely in order to help explain the facts disclosed by the books, records and other underlying evidence, but will not be admitted as evidence in the case. These charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the books, records or other underlying evidence.

Certain charts and summaries may be admitted as evidence. You may use these charts and summaries as evidence, even if the underlying documents and records are not admitted. However, the accuracy or authenticity of those charts and summaries may be challenged. It will be for you to decide how much weight, if any, you will give to them. In making that decision, you should consider all of the testimony you hear about the way in which they were prepared.

INSTRUCTION NO. 12

The fact that the parties in this case are businesses should not affect your decisions. All persons are equal before the law, and businesses, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

You are further instructed that corporations are distinct legal entities. One corporation is not liable for the debts or obligations of another corporation, absent evidence of fraud or abuse of the corporate status.

INSTRUCTION NO. 13

Although a corporation is often treated under the law as if it were a person, a corporation acts only through its agents or employees. Any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of the authority delegated to the agent by the corporation, or within the scope of his or her duties as an employee of the corporation.

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

INSTRUCTION NO. 14

Midwest claims that Twin City Tanning Waterloo breached an express contract between Midwest and Twin City Tanning Waterloo. To prevail on its claim of breach of an express contract, Midwest must prove the following five elements by the greater weight of the evidence:

First, the existence of a contract (as defined in Instruction No. 15);

Second, the terms of the contract (as defined in Instruction Nos. 16 & 19);

Third, Midwest has done what the contract requires;

Fourth, Twin City Tanning Waterloo breached the contract (as defined in Instruction No. 17); and

Fifth, the amount of damages to Midwest caused by Twin City Tanning Waterloo's breach of the contract.

If Midwest fails to prove any of these propositions, Midwest is not entitled to damages and your verdict must be for Twin City Tanning Waterloo on Midwest's breach of an express contract claim. If Midwest proves all of these propositions, it is entitled to damages in the amount that it proves, as provided in Instruction No. 27, unless Twin City Tanning Waterloo proves either of its defenses, as provided in Instruction Nos. 22 & 23.

INSTRUCTION NO. 15

The existence of a contract requires a meeting of the minds on the material terms of the agreement. 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.

INSTRUCTION NO. 16

In determining the terms of the contract, you may consider that:

1. Contractual terms may be determined by 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; and
7. Where general and specific terms in the contract refer to the same subject, the specific terms control.

INSTRUCTION NO. 17

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

INSTRUCTION NO. 18

Midwest bases its breach of an express contract claim on a document called a bill of lading. Liability for freight charges is contractual and can be controlled by bills of lading. You will have to determine, under the facts of this case, whether the bills of lading constituted contracts between Midwest and Twin City Tanning Waterloo.

A bill of lading is the basic transportation contract between the "consignor" and the "carrier." For a bill of lading to operate as a contract in this case, you will need to determine both whether Twin City Tanning Waterloo was the "consignor" and whether Midwest was the "carrier" based on the evidence presented to you.

The law defines a "consignor" as the person named in the bill of lading from whom goods have been received for shipment. A "carrier" is a party that accepts responsibility for the transportation of the freight for compensation, regardless of who actually transported it. A party may be a "carrier" even if it arranges for a third party to transport the freight. A party does not have to own the trucks providing the transportation service in order to be a "carrier."

You are instructed that the mere fact that Midwest's name does not appear on the bills of lading does not mean that it cannot prove its claim of breach of an express contract. You may find that Midwest may bring its breach of an express contract claim if it proves that the trucking companies whose names do appear on the bills of lading were acting as agents for Midwest. An agency relation exists only if there has been a manifestation by Midwest to the trucking companies that the trucking companies may enter into the bills of lading on Midwest's behalf, and assent by the trucking companies to do so. Authority for the trucking companies to sign the bills of lading can be created by written or spoken words or other conduct of Midwest, which reasonably interpreted, would cause the trucking companies to believe that Midwest desired them to sign the bills of lading on Midwest's behalf.

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INSTRUCTION NO. 18 (Cont'd)

If you find that Twin City Tanning Waterloo was the "consignor," that Midwest was the "carrier" and that the trucking companies were acting as Midwest's agents in signing the bills of lading, then you may consider Midwest's breach of an express contract claim. However, if you find that Midwest has not proved all of the above elements by the greater weight of the evidence, then your verdict must be for Twin City Tanning Waterloo on Midwest's claim for breach of an express contract. Additionally, if you find that Twin City Tanning Waterloo has clearly rebutted the presumption of liability, as provided in Instruction No. 19, then your verdict must be for Twin City Tanning Waterloo on Midwest's claim for breach of an express contract.

INSTRUCTION NO. 19

Bills of lading generally assign primary liability for the payment of freight costs to the consignor. Bills of lading also generally include a nonrecourse provision, sometimes referred to as "Section 7." If a consignor signs the nonrecourse provision, the carrier is directed not to make delivery without first requiring payment of freight costs, and delivery of the shipment to the party to whom the goods are to be delivered relieves the consignor of liability.

If a consignor fails to sign the nonrecourse provision, the consignor is presumptively liable for the cost of freight. However, this presumption may be rebutted if the consignor can clearly demonstrate, by the greater weight of the evidence, that:

1. The consignor was not acting on its own behalf, and that this fact was known by the carrier; or
2. The parties intended not only that a third party assumed an obligation to pay the freight charges, but that the consignor should not assume any liability whatsoever for the charges.

If Twin City Tanning Waterloo proves one or both of these propositions by the greater weight of the evidence, then your verdict must be for Twin City Tanning Waterloo on Midwest's claim for breach of an express contract.

INSTRUCTION NO. 20

Once evidence rebutting the presumption of liability arising out of the bills of lading has been established, the bills cease to operate as agreements assigning liability for freight costs and become mere receipts.

INSTRUCTION NO. 21

Midwest claims that Twin City Tanning Waterloo breached an implied-in-fact contract between Midwest and Twin City Tanning Waterloo. To prevail on its claim of breach of an implied-in-fact contract, Midwest must prove the following three elements by the greater weight of the evidence:

First, services were carried out under such circumstances as to give the recipient of the services reason to understand that they were performed for it and not some other person;

Second, the services were carried out under such circumstances as to give the recipient reason to understand that they were not rendered gratuitously, but with the expectation of compensation from the recipient; and

Third, the services were beneficial to the recipient.

An implied-in-fact contract requires mutual manifestation of assent.

If Midwest fails to prove any of these propositions, Midwest is not entitled to damages and your verdict must be for Twin City Tanning Waterloo on Midwest's breach of an implied-in-fact contract claim. If Midwest proves all of these propositions, it is entitled to damages in the amount that it proves, as provided in Instruction No. 28, unless Twin City Tanning Waterloo proves either of its defenses, as provided in Instruction Nos. 22 & 23.

INSTRUCTION NO. 22

Twin City Tanning Waterloo claims that Midwest is equitably estopped from bringing one or both of its claims. For your information, equitable estoppel is a doctrine based on fair dealing, good faith and justice. Under this doctrine, the parties to a valid contract may estop themselves from asserting any right under the contract by conduct inconsistent with the continued existence of the original contract.

In order to prevail on its defense that Midwest is equitably estopped from bringing its claims, Twin City Tanning Waterloo must prove that:

First, Midwest made a false representation or concealed a material fact;

Second, Twin City Tanning Waterloo lacked knowledge of the true facts;

Third, Midwest intended Twin City Tanning Waterloo to act upon such representation or concealment; and

Fourth, Twin City Tanning Waterloo did in fact rely upon such representation and suffered prejudice.

If, after hearing the evidence, you find that Twin City Tanning Waterloo has proved all of these elements by the greater weight of the evidence, then your verdict must be for Twin City Tanning Waterloo. If Twin City Tanning Waterloo fails to prove all of these propositions, then you still must consider whether Midwest has proved its breach of an express contract and breach of an implied-in-fact contract claims and whether Twin City Tanning Waterloo has proved some other defense to one or both of those claims.

INSTRUCTION NO. 23

Twin City Tanning Waterloo claims that Midwest waived its right to seek payment from Twin City Tanning Waterloo on one or both of its claims. In order to prevail on its defense of waiver, Twin City Tanning Waterloo must prove, by the greater weight of the evidence:

First, the existence of a right held by Midwest;

Second, Midwest had knowledge of such right; and

Third, Midwest intentionally relinquished such right.

Waiver can be express, shown by the affirmative acts of a party, or implied, inferred from conduct that supports the conclusion that waiver was intended.

If, after hearing the evidence, you find that Twin City Tanning Waterloo has proved all of these elements by the greater weight of the evidence, then your verdict must be for Twin City Tanning Waterloo. If Twin City Tanning Waterloo fails to prove all of these propositions, then you still must consider whether Midwest has proved its breach of an express contract and breach of an implied-in-fact contract claims and whether Twin City Tanning Waterloo has proved some other defense to one or both of those claims.

INSTRUCTION NO. 24

Your verdicts depend on whether you find certain facts have been proved by the greater weight of the evidence. In order to find that a fact has been proved by the greater weight of the evidence, you must find 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.

You have probably heard of the phrase "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.

INSTRUCTION NO. 25

I will now provide you with certain instructions on determining what, if any, damages a party is entitled to receive. The fact that I am instructing you on the proper measure of damages should not be considered as an indication that I have any view as to which party is entitled to your verdicts in this case. Instructions as to the measure of damages are given only for your guidance, in the event that you should find that Midwest is entitled to damages in accord with the other Instructions.

You must not award damages under these Instructions by way of sympathy or punishment. Remember that, throughout your deliberations on damages, as on all other issues, you must not engage in any speculation, guess or conjecture. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice for or against any of the parties. Rather, you must use your sound judgment based upon an impartial consideration of the evidence.

In arriving at the amount of damages on a claim, you cannot establish a figure by taking down the estimate of each juror as to damage and agreeing in advance that the average of those estimates shall be your award of damages for that claim.

INSTRUCTION NO. 26

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

INSTRUCTION NO. 27

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

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

In your consideration of the damages for breach of an express contract, you may consider the agreed-upon contract price for the cost of freight shipment.

INSTRUCTION NO. 28

The measure of damages for breach of an implied-in-fact contract is the reasonable value of the services provided by Midwest.

INSTRUCTION NO. 29

At the end of the trial, you must make your decisions based on what you recall of the evidence. You will not have a written transcript to consult. Therefore, you must pay close attention to the testimony as it is given.

If you wish, you may take notes during the presentation of evidence to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. And do not let notetaking distract you so that you do not hear other answers by the witnesses.

During deliberations, in any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was.

Before we begin the evidence, we will give each juror an envelope with a pad and pen in it. The envelopes are numbered according to your seat in the jury box. When you leave for breaks or at night please put your pad and pen in the envelope and leave the envelope on your chair. Your notes will be secured, and they will not be read by anyone. At the end of trial and your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 30

During the trial, it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference while the jury is present in the courtroom or by calling a recess. If a bench conference is held in the courtroom, we will switch on what we refer to as "white noise" so that the jurors cannot hear what is being said by the lawyers and me. While the bench conferences are being conducted, you should feel free to stand and stretch and visit among yourselves about anything except the case.

INSTRUCTION NO. 31

During the course of the trial, to ensure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdicts.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, do not use any electronic device or media, such as the telephone, a cell or smart phone, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog or website such as Facebook, YouTube or Twitter, to communicate to anyone any information about this case, or your opinions concerning it, until the trial has ended and you have been discharged as jurors.

Fourth, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it, until the trial has ended and your verdicts have been accepted by me. If someone should try to talk with you about the case during the trial, please report it to me through the Court Security Officer.

Fifth, during the trial, you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case—you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall or the like, it is because they are not supposed to talk or visit with you.

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INSTRUCTION NO. 31 (Cont'd)

Sixth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case, or about anyone involved with it. In fact, until the trial is over, I suggest that you avoid reading any newspapers or news journals at all, and avoid listening to any TV or radio newscasts at all. I do not know whether there might be any news reports of this case, but, if there are, you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Seventh, do not do any research or make any investigation about the case on your own. Do not consult any reference materials such as the Internet, books, magazines, dictionaries or encyclopedias. Do not contact anyone to ask them questions about issues that may arise in this case. Remember you are not permitted to talk to anyone (except your fellow jurors) about this case or anyone involved with it until the trial has ended and I have discharged you as jurors.

Eighth, do not make up your mind during the trial about what the verdicts should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence

INSTRUCTION NO. 32

The trial will proceed in the following manner:

First, the attorney for the plaintiff will make an opening statement. Next, the attorney for the defendant may, but does not have to, make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The plaintiff will then present its evidence and the attorney for the defendant may cross-examine. Following the plaintiff's case, the defendant may, but does not have to, present evidence or call witnesses. If the defendant calls witnesses, the attorney for the plaintiff may cross-examine them.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. After that, the court will instruct you further regarding your deliberations, and you will retire to deliberate on your verdicts.

Dated this 14th day of November, 2016.

Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa