

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

HORMEL FOODS CORPORATION,

Plaintiff,

vs.

**CRYSTAL DISTRIBUTION
SERVICES, INC.,**

Defendant.

No. C09-2011

FINAL JURY INSTRUCTIONS

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 Hormel and Crystal 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 Hormel or Crystal, in the performance of that person's duties, is held in law to be an act of Hormel or Crystal, respectively.

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

Hormel claims Crystal breached the Warehouse Agreement. To recover on its claim, Hormel must prove all of the following propositions:

- 1. The existence of a contract.**
- 2. The terms of the contract.**
- 3. That Crystal breached the contract in one or more of the following ways:**
 - (a) In failing to pay Hormel for damage to Hormel's products resulting from Crystal's negligence; or**
 - (b) In failing to maintain a warehouseman's legal liability policy covering all risks of loss, or providing a satisfactory bond covering all risks of loss; or**
 - (c) In failing to keep its facilities in a clean and sanitary condition or in good repair; or**
 - (d) In failing to keep the products stored at specified temperatures.**
- 4. The amount of any damage Crystal caused.**

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

FINAL INSTRUCTION NO. 7

Regarding element No. 1 of Instruction No. 6, the parties have stipulated that they executed a Warehouse Agreement that was in effect in June 2008. Accordingly, you are instructed that this element has been established as a matter of law.

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, 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.

Regarding element No. 3(a) of Instruction No. 6, "negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

FINAL INSTRUCTION NO. 10

Regarding element No. 4 of Instruction No. 6, if you find Hormel is entitled to recover on its breach of contract claim, then the measure of damages is an amount that would place Hormel in as good a position as it would have enjoyed if the contract had been performed. The damages you award for breach of contract must be foreseeable or have been reasonably foreseen at the time the parties entered into the contract.

In your consideration of the damages, you may consider: (a) the value of products that were destroyed; (b) the cost of replacing the destroyed products; and (c) other damages incurred by Hormel as a result of Crystal's breach.

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. 11

You have heard evidence that Hormel and/or Crystal received payments from their respective insurance companies with respect to their losses. You have also heard evidence that Hormel and/or Crystal must repay those amounts if they recover in this action.

You must determine whether Hormel and/or Crystal has an obligation, pursuant to their agreements with their insurance companies, to reimburse the companies from the proceeds of any damages recovered from the other party. The Court will use this information in entering an appropriate judgment.

FINAL INSTRUCTION NO. 12

Crystal claims Hormel breached an agreement found in the warehouse receipts. To recover on its claim, Crystal must prove all of the following propositions:

- 1. The existence of a contract.**
- 2. The terms of the contract.**
- 3. That Hormel breached the contract by failing to pay for disposal of the damaged products.**
- 4. The amount of any damage Hormel caused.**

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

FINAL INSTRUCTION NO. 13

Regarding element No. 1 of Instruction No. 12, for purposes of Crystal's claim, you may consider whether the warehouse receipts established an agreement of the parties. The warehouse receipts may not be considered by you in determining whether Hormel is entitled to recover on its claim.

Regarding element No. 2 of Instruction No. 12, in determining the terms of the contract, you may consider those factors set forth in Instruction No. 8.

Regarding element No. 3 of Instruction No. 12, a breach of contract occurs when a party fails to perform a term of the contract.

Regarding element No. 4 of Instruction No. 12, if you find Crystal is entitled to recover on its breach of contract claim, the measure of damages is the reasonable and necessary cost incurred in disposing of Hormel's products.

FINAL INSTRUCTION NO. 14

In the alternative to its breach of contract claim, Crystal has asserted a right to damages for “quantum meruit.” The term “quantum meruit” is used to denote an implied-in-fact contract to pay for services rendered. If you find that Crystal’s claim is governed by the Warehouse Agreement or the warehouse receipt, then you should not consider its alternative claim of quantum meruit.

To recover on this claim, Crystal must prove all of the following propositions:

1. Crystal performed services under such circumstances as to give Hormel reason to understand:
 - (a) they were performed for Hormel and not some other person; and
 - (b) they were not rendered gratuitously, but with the expectation of compensation from the recipient.
2. The services were beneficial to Hormel.
3. The fair value of the services performed.

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

FINAL INSTRUCTION NO. 15

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. 15 (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 13th day of April, 2012.



**JON STUART SCOLES
UNITED STATES MAGISTRATE JUDGE
NORTHERN DISTRICT OF IOWA**

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

HORMEL FOODS CORPORATION,

Plaintiff,

vs.

CRYSTAL DISTRIBUTION
SERVICES, INC.,

Defendant.

No. C09-2011

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. Monday morning to resume your deliberations. If you unanimously agree, however, then you may continue working past 5:00 p.m. If you have not reached a verdict by 6:00 p.m., then dinner will be delivered to you by the Court Security Officer. If you still have not reached a verdict by 9:00 p.m., then you are instructed to separate and return Monday morning at 9:00 a.m. to resume your deliberations.

If you separate and return Monday morning for additional deliberation, then 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 15th day of April, 2012.



JON STUART SCOLES
UNITED STATES MAGISTRATE JUDGE
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 unanimously agree, however, then you may continue working past 5:00 p.m. If you have not reached a verdict by 6:00 p.m., then dinner will be delivered to you by the Court Security Officer. If you still have not reached a verdict by 9:00 p.m., then you are instructed to separate and return tomorrow morning at 9:00 a.m. to resume your deliberations.

If you separate and return tomorrow morning for additional deliberation, then 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 16th day of April, 2012.



JON STUART SCOLES
UNITED STATES MAGISTRATE JUDGE
NORTHERN DISTRICT OF IOWA

4:20 p.m.