

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

LIQUID CAPITAL EXCHANGE, INC.,

Plaintiff,

v.

BDC GROUP, INC.,

Defendant.

20-CV-00089-CJW-MAR

**JURY INSTRUCTIONS**

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BDC GROUP, INC.,

Third-Party Plaintiff,

v.

TRIPLE B CONSULTING,

Third-Party Defendant.

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Members of the jury:

In the next few minutes, I am going to give you instructions about this case and about your duties as jurors. These instructions are to help you better understand the trial and your role in it. I may give you additional instructions during trial, and I will give you additional instructions at the end of the trial. Consider these instructions, together with any instructions I give you during the trial, or at the end of the trial, and apply them as a whole to the facts of this case. You must follow all instructions I give you. You must not single out some instructions and ignore others. The written instructions I give you now and at the end of the trial will be available to you in the jury room. I emphasize, however, that written instructions are not more important than oral ones. *All* instructions, whenever given and whether in writing or not, must be followed.

In considering these instructions, the order in which they are given is not important.

## **INSTRUCTION NO. 1**

As I explained during jury selection, this is a civil lawsuit over a dispute regarding the right to payment of ten invoices. Plaintiff Liquid Capital Exchange, Inc. buys its clients' right to collect payments from third parties on invoices for work performed by Liquid Capital's clients in exchange for immediate money. The purpose of this transaction is for Liquid Capital's clients to avoid waiting for payment for services rendered and instead, have immediate cash in hand to continue to fund their business. In exchange for the funds Liquid Capital provides its clients for their invoices, Liquid Capital collects payment on the invoices from the third party to whom the invoices were issued for services rendered by Liquid Capital's client. As part of this process, prior to buying invoices, Liquid Capital notifies the third party to whom an invoice is addressed that payments are to be made to it rather than Liquid Capital's client.

BDC Group Inc. is a contractor, which in relevant part, contracts with clients to install fiber-optic cable. Triple B Consulting is a subcontractor, hired by BDC to provide construction services, in this case, placing conduits for the installation of fiber-optic cable. BDC hired Triple B as its subcontractor for two projects to install fiber-optic cable for MidAmerican Energy Company referred to collectively as the MidAm Project. BDC and Triple B executed a Subcontract and BDC issued a Purchase Order to Triple B for the MidAm Project. Thereafter, Triple B issued invoices to BDC for its work on the MidAm Project.

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### **INSTRUCTION NO. 1 (Continued)**

Liquid Capital provided financing to Triple B by buying from Triple B the right to payment on ten invoices that Triple B issued to BDC. Before buying the ten invoices, Liquid Capital notified BDC to make payment to Liquid Capital on all Triple B invoices. Before Liquid Capital purchased each of the ten invoices from Triple B, Triple B sent the invoice to BDC to review with a copy to Liquid Capital. BDC then emailed Liquid Capital that the specific invoice was “approved” or “approved to process.” Liquid Capital then purchased each invoice from Triple B.

BDC claims that it later learned of Triple B’s allegedly incomplete or defective work on the MidAmerican Project. On April 2, 2020, BDC issued a Notice to Cure to Triple B. On April 6, 2020, Triple B responded to BDC’s notice. On April 9, 2020, BDC terminated its subcontract with Triple B. BDC has not paid Liquid Capital for the ten invoices that Liquid Capital purchased from Triple B.

Do not consider this summary as proof of any claim. You must decide facts from the evidence and apply the law which I will now give you.

## **INSTRUCTION NO. 2**

Liquid Capital makes the following claims against BDC: (1) Promissory Estoppel; (2) Breach of Subcontract; (3) Breach of Duty to Pay Assignee; (4) Breach of Contracts; and (5) Fraudulent Inducement.

I will instruct you further on the law of each of these claims.

### INSTRUCTION NO. 3

Liquid Capital asserts a claim of promissory estoppel. To prevail on this claim, Liquid Capital must show all of the following propositions:

1. BDC Group made a clear and definite promise.
2. The promise was made with BDC Group's clear understanding that the promise was seeking an assurance upon which Liquid Capital could rely and without which it would not act.
3. Liquid Capital acted to its substantial detriment in reasonable reliance on the promise.
4. Injustice can be avoided only through the enforcement of the promise.

In determining whether injustice can be avoided only by enforcement of the promise, the following circumstances are significant:

- (a) the availability and adequacy of other remedies against BDC, particularly cancellation and restitution;
- (b) the definite and substantial character of the action or forbearance in relation to the remedy sought;
- (c) the extent to which the action or forbearance corroborates evidence of the making and terms of the promise, or the making and terms are otherwise established by clear and convincing evidence;
- (d) the reasonableness of the action or forbearance; and
- (e) the extent to which the action or forbearance was foreseeable by the promisor.

#### **INSTRUCTION NO. 4**

Liquid Capital asserts a claim of breach of the subcontract between Triple B and BDC. To prevail on this claim, Liquid Capital must prove all of the following propositions:

1. Liquid Capital has a basis to enforce the contract;
2. Triple B and BDC were capable of contracting;
3. The existence of a contract;
4. The existence of consideration;
5. The terms and conditions of the contract;
6. Triple B has done what the contract requires or has been excused from doing what the contract requires;
7. BDC has breached the contract in some way;
8. Liquid Capital has suffered damages as a result of the breach; and
9. The amount of any damage BDC has caused.

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

If Liquid Capital has failed to prove any of these propositions, Liquid Capital is not entitled to damages on this claim. If Liquid Capital has proved all of these propositions, then you will consider the defense of recoupment as explained in Instruction No. 13.

## **INSTRUCTION NO. 5**

A condition precedent is a fact or event that the parties agree must exist or occur before the parties are required to perform their obligations under the contract. If parties fail to substantially perform a condition precedent, the contract is usually not enforceable. The party asserting the breach-of-contract has the burden to prove that it substantially performed the condition precedent. You should determine whether a condition precedent exists not on the specific words used in the contract, but on the intention of the parties gathered from the language of the entire contract.

## INSTRUCTION NO. 6

In determining the terms of a written 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. Contract terms must be given their plain, ordinary, and generally accepted meanings unless the contract itself shows them to be used in a technical or different sense. 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.
8. Where a contract contains notice provisions, substantial compliance with the provisions may suffice as performance so as long as the contemplated information is communicated. Compliance is substantial if it comports with the spirit and purpose of the notice provisions.



## INSTRUCTION NO. 7

Liquid Capital also claims that BDC breached its duty to pay Liquid Capital as an assignee to the Subcontract.

Liquid Capital claims that BDC could only discharge its obligations, if any, under the Ten Invoices by paying Liquid Capital. BDC may discharge its obligations by paying the assignor Triple B until, but not after, BDC receives a notification, signed by Triple B or Liquid Capital, that the amount due or to become due under the Ten Invoices has been assigned and that payment is to be made to Liquid Capital and BDC may not discharge the obligation by paying Triple B.

“Account debtor” means a person obligated on an account.

“Account” means a right to payment of a monetary obligation, whether or not earned by performance, for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; for services rendered or to be rendered.

Triple B may, without BDC’s approval, assign rights to payment of invoices to Liquid Capital, even if the Subcontract between Triple B and BDC requires BDC to approve such assignment.

If Liquid Capital has proven the forgoing, you may find for Liquid Capital on this statutory assignment claim, subject to BDC’s affirmative defense of recoupment as explained in Instruction No. 13.

## INSTRUCTION NO. 8

When Liquid Capital claims that BDC breached its duty to pay Liquid Capital as an assignee to the Subcontract, Liquid Capital is acting as the assignee to the Subcontract. Liquid Capital is the assignee because Triple B sold and/or assigned rights to payment on an invoice to Liquid Capital. Therefore, Liquid Capital was entitled to enforce the obligations of BDC and exercise the rights of Triple B with respect to the obligation of BDC to make payment, including, among other things, suing for breach of an underlying subcontract.

Liquid Capital is subject to all terms of the Subcontract and the defenses to which Triple B was subject, so BDC may assert the defense of recoupment as set out in Instruction No. 13.

## **INSTRUCTION NO. 9**

Liquid Capital claims that BDC breached contracts that it formed with Liquid Capital when it promised to pay the ten Invoices identified in certain emails.

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.

A meeting of the minds requires consideration, an offer, and an acceptance of that offer.

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. The benefit or detriment qualifies as consideration, no matter how small, if the party with the benefit or the detriment agreed to do something they are not already obliged to do. When the contract provides for mutual promises, each promise is a consideration for the other promise.

An offer is an expression by one party of their willingness to enter into a contract with another party. In order to form an offer, the terms of the offer must be sufficiently definite. If the offer contains terms of payment and services it is sufficiently definite. Whether an offer exists is objectively measured in terms of whether a reasonable person would understand that by accepting, they would be bound by a contract.

An acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer. There is no mutual assent and no contract unless the acceptance conforms strictly to the offer in all its conditions, without any deviation or condition whatever.

## **INSTRUCTION NO. 10**

Both of Liquid Capital's breach-of-contract claims involve consideration. 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 unless full performance has been waived by the act of the other party.

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 claim 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; and
2. The extent to which defendant can be adequately compensated for the part of that benefit of which defendant will be deprived.

The right to insist on performance can be given up. This is known as a "waiver." A waiver may be shown by actions, or you may conclude from a party's conduct and the surrounding circumstances that a waiver was intended. The essential elements of a waiver are the existence of a right, knowledge of that right, and an intention to give it up.

## INSTRUCTION NO. 11

Liquid Capital also claims that BDC Group fraudulently induced Liquid Capital to purchase the Ten Invoices by misrepresenting that it would pay the Ten Invoices. To recover on the fraudulent misrepresentation claim, Liquid Capital must prove the following propositions by a preponderance of clear, satisfactory and convincing evidence:

1. For each of the Ten Invoices, BDC Group made one or more representations to the Liquid Capital that BDC Group unconditionally would pay that invoice.
2. The representation(s) were false.
3. The representation(s) were material.
4. BDC Group knew the representation(s) were false.
5. BDC Group intended to deceive Liquid Capital.
6. Liquid Capital acted in reliance on the truth of the representation(s) and was justified in relying on the representation.
7. The representation(s) caused damage to Liquid Capital.
8. The amount of damage caused by these representations.

If Liquid Capital has failed to prove any of these propositions, it cannot recover damages.

A “representation” is any word or conduct asserting the existence of a fact. A representation of fact includes a promise to perform a future act. A representation of fact implies that the maker has definite knowledge or information supporting their statement.

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### INSTRUCTION NO. 11 (cont.)

A representation is “material” if:

1. A reasonable person would consider it as important in making a decision;
2. BDC knew or had reason to know that Liquid Capital considered, or was likely to consider, the representations were important in making a decision to purchase the ten invoices; or
3. The representation influenced Liquid Capital to purchase the ten invoices, which would not have occurred otherwise.

BDC is liable to Liquid Capital only if Liquid Capital relied on the representation and BDC intended or had reason to expect its representation would cause Liquid Capital to act. A person has reason to expect a result if it has information from which a reasonable person would conclude that the result will follow.

As part of its fraudulent misrepresentation claim, Liquid Capital must show that it relied on the representation and the reliance was justified. You should find that Liquid Capital relied on the representation as long as the representation was a substantial factor in bringing about the action. Whether reliance is justified depends on what the plaintiff can reasonably be expected to do in light of the characteristics of the particular plaintiff and the specific surrounding circumstances.

As part of its fraudulent misrepresentation claim, Liquid Capital must show that BDC intended to deceive Liquid Capital. You should find that BDC intended to deceive Liquid Capital if any of the following situations existed when BDC made a representation:

1. BDC wanted to deceive Liquid Capital or believed that Liquid Capital would in all likelihood be deceived;
2. BDC had information from which a reasonable person would conclude that Liquid Capital would be deceived; or
3. BDC made the representation without concern for the truth.

## INSTRUCTION NO. 12

As I explained in instruction 11, Liquid Capital claims that BDC Group fraudulently induced Liquid Capital to purchase the Ten Invoices by misrepresenting that it would pay the Ten Invoices. As part of this claim, Liquid Capital has to show that BDC knew that the representation was false. BDC knew the representation was false if any of the following situations existed:

1. BDC actually knew or believed the representation was false.
2. BDC made the representation without belief in its truth or in reckless disregard of whether it was true or false.
3. BDC falsely stated or implied that the representation was based on its personal knowledge or investigation.
4. BDC made a representation which it knew or believed was materially misleading because it left out unfavorable information.
5. BDC stated its intention to do or not to do something when it did not actually have that intention.
6. BDC knew the representation could be understood in both a true and false manner, and made the representation (a) intending that it be understood in the false sense, (b) having no belief as to how it would be understood, or (c) in reckless disregard of how it would be understood.
7. BDC's special relationship of trust and confidence to the plaintiff made it the defendant's duty to know whether the representation was true or false.

### INSTRUCTION NO. 13

The rights of Liquid Capital are subject to whatever defense or claim in recoupment BDC has against Triple B arising from the subject transaction (each specific invoice).

Recoupment means that BDC's defense, if successful, reduces the amount BDC owes to Liquid Capital for its breach of the subcontract claim or its statutory assignment claim. However, the reduction of the amount BDC may reduce from the amount that Liquid Capital may recover on these claims is limited to amounts related to the same transaction (each specific invoice) on which Liquid Capital is suing. If BDC has claims against Triple B that are not part of the subject transactions (the ten invoices), then even if successful, that amount cannot reduce the claim of Liquid Capital against BDC.

BDC has the burden, to prove by a preponderance of the evidence, that it is entitled to recoupment damages for each of the ten invoices.

BDC's defense of recoupment can be waived. Again, a waiver may be shown by actions, or you may conclude from a party's conduct and the surrounding circumstances that a waiver was intended. The essential elements of a waiver are the existence of a right, knowledge of that right, and an intention to give it up.



#### **INSTRUCTION NO. 14**

A corporation acts only through its agents or employees and any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of his or her duties as an employee of the corporation.

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.

## INSTRUCTION NO. 15

You must base your verdict only upon the evidence, these instructions, and other instructions that I may give you during trial.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations, which are agreements between the parties.
4. Any other matter admitted into evidence.

There are two types of evidence from which you may properly find the truth as to the facts of this 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.

Sometimes during a trial, references are made to pre-trial statements and reports, interrogatories, 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.

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### INSTRUCTION NO. 15 (Continued)

The following are not evidence.

1. Opening statements, closing arguments, and questions are not evidence.
2. Anything said by the parties, the court, and prospective jurors during jury selection.
3. Objections and rulings on objections.
4. Testimony that I strike from the record, or tell you to disregard is not evidence and must not be considered.
5. Demonstrative summaries not received as evidence. Certain charts and summaries may be shown to you in order to help explain the facts or other underlying evidence in the case. These are used for convenience. They are not themselves evidence or proof of any facts.
6. Anything you see or hear about this case outside the courtroom is not evidence.

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 that occurs, and instruct you on the purposes for which the item can and cannot be used.

### **INSTRUCTION NO. 16**

It will be your duty to decide from the evidence what the facts are. You, and you alone, are the judges of the facts. You are allowed to consider the evidence in the light of your observations and experiences. You will hear the evidence, decide what the facts are, and then apply those facts to the law that I will give you in these instructions, any instruction given during the trial, and in the final instructions at the conclusion of the case. You will then deliberate and reach your verdict. 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.

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 verdict should be.

## INSTRUCTION NO. 17

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 says, or only part of it, or none of it.

In deciding what testimony to believe, consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an earlier time, the general reasonableness of their testimony, and the extent to which their testimony is consistent with other evidence that you believe. Do not let sympathy, or your own likes or dislikes, influence you. The law requires you to come to a just verdict based only on the evidence, your common sense, and the law that I give you in my instructions, and nothing else.

A witness may be discredited or "impeached" by contradictory evidence, or by evidence that at some 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. If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves. 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; that may depend on whether it has to do with an important fact or only a small detail.

### **INSTRUCTION NO. 18**

The parties may introduce charts and summaries to help explain the facts disclosed by the records, or other underlying evidence in the case, even though the underlying documents and records may not be in evidence. Those charts or summaries are used for convenience and to help you understand the evidence. 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 decide the facts from the books, records or other underlying evidence. The opposing party may challenge the accuracy of those charts and summaries. It is 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 heard about the way they were prepared.

### **INSTRUCTION NO. 19**

You may hear testimony from witnesses who may be knowledgeable in a field because of their education, experience, or both. They are permitted to give their opinions on matters in that field and the reasons for their opinions.

You may accept or reject expert testimony just like any other testimony. After considering such witness' education and experience, the reasons given for the opinion, and all the other evidence in the case, you may give such a witness' testimony whatever weight, if any, you think it deserves.

These type of witnesses may be asked to assume certain facts are true, and to give an opinion based on that assumption. This is called a hypothetical question. When deciding the weight, if any, to give to the witness' testimony, if you conclude a fact assumed in a hypothetical question has not been proved by the evidence, you should consider the extent to which the falsely assumed fact affects the value of the opinion.

## **INSTRUCTION NO. 20**

Testimony will be presented to you in the form of a deposition. A deposition is the recorded answers a witness made under oath to questions asked by lawyers before trial. The deposition testimony to be offered was recorded in writing and by video and may be read or shown to you. You should consider the deposition testimony, and judge its credibility, as you would that of any witness who testifies here in person. If the deposition testimony is read to you, do not place any significance on the manner or tone of voice used to read the witness's answers to you.



## **INSTRUCTION NO. 21**

During the trial, you may hear the word “interrogatory.” An interrogatory is a written question one party can send to the other which the other party then must answer under oath and in writing. Consider interrogatories and the answers to them as if they were, respectively, questions asked and answered under oath here in court.

## **INSTRUCTION NO. 22**

During the trial, the parties may make objections. You should not hold it against the parties when they do this. A party may object when the other party offers testimony or other evidence the party believes is not admissible. If I sustain an objection to a question, you should not pay any attention to the question itself, disregard any answer that may have been provided and not try to guess at what the answer might have been. Also, when I rule or comment on an objection, you should not think I have any opinions about the case, favoring one side or the other.

### INSTRUCTION NO. 23

Your verdict will depend upon whether or not you find certain facts have been proved by the greater weight of the evidence, also known as a preponderance of the evidence. The obligation to prove a fact, or “the burden of proof,” is upon the party whose claim depends upon that fact.

To determine whether a fact has been proved by the greater weight of the evidence, you must consider the evidence in the case, decide which evidence is more believable, and then determine whether the fact is more likely true than not true. If you find a fact is more likely true than not true, then the fact has been proved by the greater weight of the evidence. If you find a fact is more likely not true than true, or you find the evidence on the fact is equally balanced, then the fact has not been proved by the greater weight of the evidence. The greater weight of the evidence is not determined by the number of witnesses or exhibits a party presents, but by your judgment as to the weight of all of the evidence.

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 one.

## INSTRUCTION NO. 24

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. Do not let note-taking 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.

We have given each of you 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. 25**

During the trial, it may be necessary for me to talk with the attorneys out of your hearing, either by having a bench conference here, while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence and to avoid wasting your time. We will do what we can to keep the number and length of these conferences to a minimum.

## **INSTRUCTION NO. 26**

You must decide this case solely on the evidence and your own observations, experiences, reason, common sense and the law in these instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers or witnesses, even to pass the time of day, so that there is no reason to be suspicious about your fairness. The lawyers, parties and witnesses are not supposed to talk to you either.
- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a PDA, a computer, the Internet, any

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### **INSTRUCTION NO. 26 (Continued)**

Internet service, any text or instant messaging service, any Internet chat room, any blog or any website such as Facebook, YouTube or Twitter, to communicate to anyone any information about this case until I accept your verdict.

- Do not do any research on the Internet, in libraries, in the newspapers, on social media, in dictionaries, or other reference books or in any other way or make any investigation about this case, the law or the people involved 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.
- Do not read any news stories or articles, in print, on the Internet or on any blog, about this case or about anyone involved with it or listen to any radio or television reports about it or about anyone involved with it or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media, and it will be more accurate.
- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on biases. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies,

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**INSTRUCTION NO. 26 (Continued)**

stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.

- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.



**INSTRUCTION NO. 27**

The trial will proceed in the following manner:

First, the lawyers for Liquid Capital Exchange may make an opening statement. Next, the lawyers for BDC Consulting may make an opening statement. An opening statement is not evidence, but it is a summary of the evidence the parties expect you will see and hear during the trial.

After opening statements, Liquid Capital Exchange will then present evidence in support of its contentions. BDC will have a chance to cross-examine Liquid Capital's witnesses. After Liquid Capital Exchange has finished presenting its case, BDC may present evidence, and Liquid Capital Exchange will have a chance to cross-examine BDC's witnesses.

After you have seen and heard all of the evidence from both sides, the parties will make closing arguments that summarize and interpret the evidence. Just as with opening statements, closing arguments are not evidence. After the closing arguments, I will instruct you further on the law. After the closing arguments and after the court's instructions you will go to the jury room to deliberate and decide on your verdict.

DATED this 15 day of April, 2022



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C. J. WILLIAMS  
United States District Court Judge  
Northern District of Iowa



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

LIQUID CAPITAL EXCHANGE, INC.,

Plaintiff,

v.

BDC GROUP, INC.,

Defendant.

20-CV-00089-CJW-MAR

**FINAL  
JURY INSTRUCTIONS**

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Members of the jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions before you begin your deliberations.

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 the instructions I gave you at the beginning of and during trial are not repeated here.

**INSTRUCTION NO. 28**

A “*course of dealing*” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

## INSTRUCTION NO. 29

It is my duty to instruct you about damages. By instructing you on damages, I do not mean to suggest what your verdict should be on any claim. If you find for Liquid Capital or BDC Group on one or more of their claims, then you must determine what damages, if any, to award on each claim independently. You cannot determine a single award and apportion the amount among the claims. You cannot award damages twice for the same harm. “Damages” are the amount of money that will fairly and adequately compensate a party for any injury you find it suffered as a result of another party’s conduct. The party claiming damages must prove damages by a preponderance, or greater weight of the evidence.

In arriving at an amount of damages, you must not engage in speculation, guess, or conjecture, and you must not award any damages as a result of prejudice or sympathy. You cannot determine the amount of damages by taking down each juror’s estimate and agreeing in advance that the average of those estimates will be your damages award. I will explain the measure of damages for each claim.

### 1. Promissory Estoppel Damages.

The measure of damages for promissory estoppel is the amount to compensate the party to whom a promise has been made for its reliance on that promise.

### 2. Breach of Contract Damages.

The measure of damages for breach of a contract is an amount that would place the nonbreaching party 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. Damages which a reasonable person would expect to follow from breach of a contract are direct and thus should be awarded.

(Continued)

**INSTRUCTION NO. 29 (Continued)**

**3. Fraud Damages.**

The measure of damages for Liquid Capital's fraud claim is an amount to place it in the same financial position as if the fraud had not taken place.

### **INSTRUCTION NO. 30**

A party must establish a reasonable basis from which damages can be ascertained; it cannot be too uncertain or speculative. If the uncertainty lies only in the amount of damages, recovery may be had if there is proof of reasonable basis from which the amount may be inferred. A party's failure to provide written evidence of its damages in a breach of contract claim is not fatal to its claim. Damages can be established in part or in whole by witness testimony.

### INSTRUCTION NO. 31

Punitive damages may be awarded on plaintiff's fraudulent inducement claim only if the plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence the defendant's conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to the plaintiff.

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the defendant and others from like conduct in the future. You may award punitive damages only if the defendant's conduct warrants a penalty in addition to the amount you award to compensate for plaintiff's actual injuries.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of defendant's conduct that harmed the plaintiff.
2. The amount of punitive damages which will punish and discourage like conduct by the defendant. You may consider the defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of the defendant's wealth or ability to pay.
3. The plaintiff's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to the plaintiff.
4. The existence and frequency of prior similar conduct.



## INSTRUCTION NO. 32

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

**First**, you will select a 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 this without going against what you believe to be the truth, because all jurors have to agree on the verdict. Each of you must come to your own decision, but only after you have considered all the evidence, discussed the evidence fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges -- judges of the facts. Your only job is to study the evidence and decide what is true.

**Third**, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Give the note to the court security officer and I will answer you as soon as I can, either in writing or here in court. While you are deliberating, do not tell anyone - including me - how many jurors are voting for any side.

**Fourth**, your verdict has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

**Finally**, the verdict form is your written decision in this case. You will take this form to the jury room, and when you have all agreed on the verdict, your foreperson will fill in the forms, sign and date them, and tell the court security officer that you are ready to return to the courtroom.

**DATED** this 24 day of April, 2022.



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C.J. Williams  
United States District Judge  
Northern District of Iowa