

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

2013 MAR 20 PM 5:30

DEPUTY CLERK

R

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EAGLE SUSPENSIONS, INC.,)
)
 Plaintiff,)
)
 VS.)
)
 HELLMANN WORLDWIDE)
 LOGISTICS, INC.,)
)
 Defendant.)

CIVIL ACTION NO.

3:12-CV-0611-G

VERDICT

This verdict form contains a series of questions together with related instructions and definitions.

Multiple Claims

You must not award compensatory damages more than once for the same injury. The plaintiff is only entitled to be made whole once, and may not recover more than it has lost. Of course, if different injuries are attributed to the separate claims, then you must compensate the plaintiff fully for all of its injuries. With

respect to exemplary damages, you may make separate awards on each claim that the plaintiff has established.

Breach of Contract

To prevail on this claim, the plaintiff Eagle must establish each of the following elements by a preponderance of the evidence:

First: That Eagle had a valid contract with Hellmann;

Second: That Hellmann breached the contract; and

Third: That Eagle sustained damages from Hellmann's breach of contract.

To form a valid agreement, the parties must have the same understanding of the subject matter of the agreement and all its essential terms. A term is essential if, at the time of contracting, the parties would reasonably regard it as a vitally important part of the bargain. To be enforceable, a contract must be reasonably definite and certain.

A contract may be formed, even if not formally executed, if it is clear that the parties intended to bind themselves to the terms.

In deciding whether the parties reached an agreement, you may consider what they said and did in light of the surrounding circumstances, including whether either party takes any action in preparation for performance during the negotiations. You may not consider the parties' unexpressed thoughts or intentions.

Damages

If you find that the defendant Hellmann committed a breach of contract, the plaintiff Eagle is entitled to compensation in an amount calculated to compensate it for the harm caused by the breach. The compensation should place Eagle in the same position it would have been in if the contract had been performed. In other words, the measure of damages is the loss Eagle actually sustained as a result of the breach of the contract.

If you find that Eagle is entitled to a verdict in accordance with these instructions, but do not find that Eagle has sustained actual damages, then you may return a verdict for Eagle in some nominal sum such as one dollar. Nominal damages are not given as an equivalent for the wrong but rather merely in recognition of a technical injury and by way of declaring the rights of the plaintiff.

QUESTION NO. 1:

Do you find by a preponderance of the evidence that the defendant Hellmann Worldwide Logistics, Inc. and the plaintiff Eagle Suspensions, Inc. entered into an agreement whereby Hellmann agreed to arrange the shipment of two industrial presses from Mexico to Durant, Oklahoma for and on behalf of the plaintiff Eagle?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: Yes

If you answered "Yes" to Question No. 1, continue to the next page and answer Question No. 2. Otherwise, skip to the breach of fiduciary duty instruction.

QUESTION NO. 2:

Do you find by a preponderance of the evidence that the defendant
Hellmann failed to comply with the agreement found by you in Question 1?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: Yes

If you answered "Yes" to Question No. 2, continue to the next page and answer
Question No. 3. Otherwise, skip to breach of fiduciary duty instruction.

QUESTION NO. 3:

What sum of money, if any, do you find from a preponderance of the evidence, would compensate the plaintiff Eagle for the damages, if any, that were proximately caused by the defendant Hellmann's failure to comply with the agreement found by you in Question 1?

INSTRUCTION: Answer separately in dollars and cents, if any, for each of the following elements of damages. Do not add any amount for interest on damages, if any. If there is no award, state "none."

	<u>AMOUNT</u>
(1) Actual cost to replace the presses	\$ <u>27,000.00</u>
(2) Damages associated with Eagle's loss of use of the presses	\$ <u>270,000.00</u>

Proceed to breach of fiduciary duty instruction.

Breach of Fiduciary Duty

If the plaintiff Eagle and the defendant Hellmann had a relationship such that Eagle was Hellmann's principal and Hellmann was Eagle's agent, then Hellmann had a fiduciary duty to act in Eagle's best interests. Hellman was Eagle's agent if Eagle manifested consent to Hellmann that Hellmann would act on Eagle's behalf, subject to Eagle's control, and if Hellmann consented to act in this way. Hellmann could only be Eagle's agent if Eagle had the right to control Hellmann's actions.

If a relationship of trust and confidence existed between Eagle and Hellmann, then Hellmann had a fiduciary duty to act in Eagle's best interest. A relationship of trust and confidence existed if Eagle justifiably placed trust and confidence in Hellmann to act in Eagle's best interest. However, a party's subjective trust and feelings alone do not justify transforming arm's-length dealings into a relationship of trust and confidence.

If Hellmann was Eagle's agent or if a relationship of trust and confidence existed between Eagle and Hellmann, then Hellmann must show it complied with its fiduciary duties. To prove it complied with its fiduciary duties, Hellmann must show that:

1. The transaction in question was fair and equitable to Eagle;
2. Hellmann made reasonable use of the confidence that Eagle placed in it;

3. Hellmann acted in the utmost good faith and exercised the most scrupulous honesty toward Eagle;
4. Hellmann placed the interests of Eagle before its own, did not use the advantage of its position to gain any benefit for itself at the expense of Eagle, and did not place itself in any position where its self-interest might conflict with its obligations as a fiduciary; and
5. Hellmann fully and fairly disclosed all important information to Eagle concerning the shipment of the presses.

QUESTION NO. 4:

Has Eagle proved, by a preponderance of the evidence, that Hellmann was Eagle's agent in connection with Hellmann's agreement to deliver the presses?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: Yes

Answer Question No. 5.

QUESTION NO. 5:

Has Eagle proved, by a preponderance of the evidence, that a relationship of trust and confidence existed between Eagle and Hellmann?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: Yes

If you answered "Yes" to Question No. 4 or Question No. 5, answer Question No. 6. Otherwise proceed to federal common law non-delivery instruction.

QUESTION NO. 6:

Did Hellman prove, by a preponderance of the evidence, that it complied with its fiduciary duties to Eagle?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: No

If you answered "No" to Question No. 6, answer Question No. 7. Otherwise, proceed to the federal common law non-delivery instruction.

QUESTION NO. 7:

What sum of money, if any, would fairly and reasonably compensate Eagle for any damages, that were proximately caused by Hellmann's failure to comply with its fiduciary duties?

INSTRUCTION: Answer in dollars and cents or "none."
Do not add any amount for interest.

AMOUNT
\$ 500.00

Proceed to federal common law non-delivery instruction.

Federal Common Law Non-Delivery

Because the defendant Hellmann has stipulated to liability for non-delivery, the only questions you are required to consider with respect to the federal common law non-delivery claim are (1) whether the plaintiff Eagle incurred damages due to the non-delivery; and (2) what the amount of those damages is.

QUESTION NO. 8:

Did Eagle prove, by a preponderance of the evidence, that it sustained damages as a result of Hellmann's failure to deliver the presses to their destination?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: Yes

If you answered "Yes" to Question No. 8, answer Question No. 9. Otherwise proceed to the punitive damages instruction.

QUESTION NO. 9:

What sum of money, if any, would fairly and reasonably compensate Eagle for any damages that were proximately caused by Hellmann's failure to deliver the presses to their destination?

INSTRUCTION: Answer in dollars and cents or "none."
Do not add any amount for interest.

AMOUNT
\$ none

Proceed to exemplary damages instruction.

Exemplary Damages

“Exemplary damages” means an amount that you may in your discretion award as a penalty or by way of punishment.

You may award exemplary damages, if you answered “No” to Question No. 6 and if Eagle has proved by clear and convincing evidence that Hellmann acted with malice, fraud, or gross negligence. Clear and convincing evidence means the measure or degree of proof that produces a firm belief of conviction of the truth of the allegations sought to be established. “Malice” means a specific intent by Hellmann to cause substantial injury or harm to Eagle. Fraud occurs when --

- a. A party makes a material misrepresentation;
- b. The misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of its truth and as a positive assertion;
- c. The misrepresentation is made with the intention that it should be acted on, or cause inaction, by the other party; and
- d. The other party acts in reliance on the misrepresentation and thereby suffers injury.

“Misrepresentation” means a false statement of fact or a promise of future performance made with an intent, at the time the promise was made, not to perform as promised.

“Gross negligence” means an act or omission by Hellmann, which, when viewed objectively from the standpoint of Hellmann at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and of which Hellmann had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

Factors to consider in awarding a specific amount of exemplary damages, if any, are --

- a. the nature of the wrong,
- b. the character of the conduct involved,
- c. the degree of culpability of the defendant,
- d. the situation and sensibilities of the parties concerned,
- e. the extent to which such conduct offends a public sense of justice and propriety, and
- f. the net worth of the defendant.

In making any award of exemplary damages, you should consider that the purpose of exemplary damages is to punish a defendant for shocking conduct, and to deter that defendant and others from engaging in similar conduct in the future. The law does not require you to award exemplary damages. However, if you decide to award exemplary damages, you must use sound reason in setting the amount of the

damages. The amount of an award of exemplary damages must not reflect bias, prejudice, or sympathy toward any party. However, the amount can be as large as you believe necessary to fulfill the purposes of exemplary damages. You may consider the financial resources of the defendant in fixing the amount of exemplary damages.

Exemplary damages can be assessed against a corporation for the acts of one acting or purporting to act on its behalf if, but only if --

- a. the corporation authorized the doing and the manner of the act, or
- b. the one acting or purporting to act on the corporation's behalf was unfit and the corporation was reckless in employing him, or
- c. the one acting or purporting to act on the corporation's behalf was employed in a managerial capacity and was acting in the scope of employment, or
- d. the corporation or a manager of the corporation ratified or approved the act.

QUESTION NO. 10:

Do you find by clear and convincing evidence that any injury to Eagle in this case resulted from malice, fraud, or gross negligence on the part of Hellmann?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: Yes

If you answered "Yes" to Question No. 10, answer Question No. 11. Otherwise, proceed to the mitigation of damages instruction.

QUESTION NO. 11:

What sum of money, if any, should be assessed against Hellmann and awarded to Eagle as exemplary damages, for the conduct found in response to Question 10?

INSTRUCTION: Answer in dollars and cents or "none."

ANSWER: \$ 30,000.00

Proceed to mitigation of damages instruction.

Mitigation of Damages

A person who claims damages resulting from the wrongful act of another has a duty under the law to use reasonable diligence to mitigate -- to avoid or minimize -- those damages.

If you find the defendant is liable and the plaintiff has suffered damages, the plaintiff may not recover for any item of damage which it could have avoided through reasonable effort. If you find by a preponderance of the evidence that Eagle unreasonably failed to take advantage of an opportunity to lessen its damages, you should deny it recovery for those damages which it would have avoided had it taken advantage of the opportunity.

You are the sole judge of whether the plaintiff acted reasonably in avoiding or minimizing its damages. An injured plaintiff may not sit idly by when presented with an opportunity to reduce its damages. However, the plaintiff is not required to exercise unreasonable efforts or incur unreasonable expenses in mitigating the damages. The defendant has the burden of proving the damages which the plaintiff could have mitigated. In deciding whether to reduce the plaintiff's damages because of its failure to mitigate, you must weigh all the evidence in light of the particular circumstances of the case, using sound discretion in deciding whether the defendant has satisfied its burden of proving that the plaintiff's conduct was not reasonable.

QUESTION NO. 12:

Has Eagle failed to mitigate its damages?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: No

If you answered "Yes" to Question No. 12, answer Question No. 13. Otherwise proceed to the limitation of liability instruction.

QUESTION NO. 13:

What amount of damages did Eagle fail to avoid?

INSTRUCTION: Answer in dollars and cents or “none.”

ANSWER: \$ _____

Proceed to limitation of liability instruction.

Limitation of Liability

In order to fully determine the amount of damages you may award to Eagle, you must determine whether there was a valid agreement between Hellmann and Eagle to limit Hellmann's liability for Eagle's damages, if any.

To form a valid agreement, the parties must have the same understanding of the subject matter of the agreement and all its essential terms. A term is essential if, at the time of contracting, the parties would reasonably regard it as a vitally important part of the bargain. To be enforceable, a contract must be reasonably definite and certain.

A contract may be formed, even if not formally executed, if it is clear that the parties intended to bind themselves to the terms.

In deciding whether the parties reached an agreement, you may consider what they said and did in light of the surrounding circumstances, including whether either party takes any action in preparation for performance during the negotiations. You may not consider the parties' unexpressed thoughts or intentions.

QUESTION NO. 14:

Did the defendant Hellmann prove by a preponderance of the evidence that it and Eagle had an agreement under which they agreed to limit the defendant Hellmann's liability for any damages associated with the shipment of the presses to only \$50.00?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: No

Dated: March 20, 2013.



FOREPERSON