UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONTRACT DESIGN GROUP, INC.,
ROBERT MURRAY,

Plaintiffs,

v.

WAYNE STATE UNIVERSITY, *et. al*,

Defendants.
_____/

Case No. 2:10-CV-14702-GAD-MJH

Honorable Gershwin A. Drain

Magistrate Judge Michael J. Hluchaniuk

JURY INSTRUCTIONS

INDEX OF INSTRUCTIONS

Instruction No. 1, General Introduction, Instructions at Close of Evidence: Duty of Court And Jury

Now that you have heard the evidence and the argument, it is my duty to instruct you about the applicable law. It is your duty to follow the law as I will state it and to apply it to the facts as you find them from the evidence in the case. Do not single out one instruction as stating the law, but consider the instructions as a whole. Unless I state otherwise, you should consider each instruction given to apply separately and individually to each plaintiff and to each defendant in the case. Do not be concerned about the wisdom of any rule of law stated by me. You must follow and apply the law.

[The lawyers have properly referred to some of the governing rules of law in their arguments. If there is any difference between the law stated by the lawyers and as stated in these instructions, you are governed by my instructions.]

Nothing I say in these instructions indicates that I have any opinion about the facts. You, not I, have the duty to determine the facts.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

Authority

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 103.01 (6th ed.)
O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 103.10 (6th ed.)
(Instruction 16 and 18 were combined.)

Instruction No. 2, All Persons Equal Before the Law

You should consider and decide this case as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. A corporation is entitled to the same fair trial as a private individual. All persons, including corporations, and other organizations stand equal before the law, and are to be treated as equals.

Authority

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 103.12 (6th ed.)

Instruction No. 3, Evidence in the Case

Unless you are otherwise instructed, the evidence in the case consists of the sworn testimony of the witnesses regardless of who called the witness, all exhibits received in evidence regardless of who may have produced them, and all facts and events that may have been admitted or stipulated to.

Statements and arguments by the lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statement, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. However, when the lawyers on both sides stipulate or agree on the existence of a fact, unless otherwise instructed, you must accept the stipulation and regard that fact as proved.

Any evidence to which I have sustained an objection and evidence that I have ordered stricken must be entirely disregarded.

Generally speaking, there are two types of evidence that are generally presented during a trial—direct evidence and circumstantial evidence. "Direct evidence" is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. "Indirect or circumstantial" evidence is proof of a chain of facts and circumstances indicating the existence or nonexistence of a fact.

The law generally makes no distinction between the weight or value to be given to either direct or circumstantial evidence. A greater degree of certainty is not required of circumstantial evidence. You are required to find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

Authority

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 104.05 (6th ed.)
O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 103.30 (6th ed.)
(Combined Jury Instructions 23 and 29 per agreement by the parties 4/18/14)

Instruction No. 4, Questions Not Evidence

If a lawyer asks a witness a question that contains an assertion of fact, you may not consider the assertion as evidence of that fact. The lawyer's questions and statements are not evidence.

Authority

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 103.34 (6th ed.)

Instruction No. 5, Election of Foreperson; Duty to Deliberate; Communications with Court; Cautionary; Unanimous Verdict; Verdict Form

You must follow the following rules while deliberating and returning your verdict:

First, the foreperson you selected 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 and try to reach agreement.

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

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not make a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are 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 marshal or bailiff, 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 that I have given to you in my instructions. The verdict must be an agreement between no fewer than 6 of the jurors. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

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[*s*], your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

Authority

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 103.50 (6th ed.)

Instruction No. 6, "Inferences" Defined

You are to consider only the evidence in the case. However, you are not limited to the statements of the witnesses. You may draw from the facts that you find have been proved such reasonable inferences as seem justified in light of your experience.

"Inferences" are deductions or conclusions that reason and common sense lead you to draw from facts established by the evidence in the case.

Authority

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 104.20 (6th ed.)

Instruction No. 7, Expert Witness

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. There is an exception to this rule for "expert witnesses." An expert witness is a person who, by education and experience has become expert in some art, science, profession, or calling. Expert witnesses state their opinions as to matters in which they profess to be expert, and may also state their reasons for their opinions.

You should consider each expert opinion received in evidence in this case, and give it such weight as you think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you feel the expert's opinion is outweighed by other evidence, you may disregard the opinion entirely.

Authority

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 104.40 (6th ed.)

Instruction No. 8, Charts and Summaries

Certain charts and summaries have been shown to you in order to help explain facts disclosed by books, records, and other documents that are in evidence in the case. These charts or summaries are not themselves evidence or proof of any facts. If the charts or summaries do not correctly reflect facts or figures shown by evidence in the case, you should disregard them.

In other words, the charts or summaries are used only as a matter of convenience. To the extent that you find they are not truthful summaries of facts or figures shown by the evidence in the case, you are to disregard them entirely.

Authority

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 104.50 (6th ed.)

Instruction No. 9, Handwriting

When the identity of the person who has handwritten something is a question, any proved or admitted handwriting of this person, or anyone else, may be received in evidence and used as an example or a specimen for comparison with any handwriting in dispute.

Authority

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 104.52 (6th ed.)

Instruction No. 10, Number of Witnesses

The weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or nonexistence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

You are not bound to decide any issue of fact in accordance with the testimony of any number of witnesses that does not produce in your minds belief in the likelihood of truth, as against the testimony of a lesser number of witnesses or other evidence producing such belief in your minds.

The test is not which side brings the greater number of witnesses or takes the most time to present its evidence, but which witnesses and which evidence appeal to your minds as being most accurate and otherwise trustworthy.

Authority

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 104.54 (6th ed.)

Instruction No. 11, Discrepancies in Testimony

You are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by evidence contrary to the testimony.

You should carefully examine all the testimony given, the circumstances under which each witness has testified, and every matter in evidence tending to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor or manner while testifying.

Consider the witness' ability to observe the matters as to which the witness has testified, and whether the witness impresses you as having an accurate recollection of these matters. Also, consider any relation each witness may have with either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which the testimony of each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses may or may not cause you to discredit such testimony. Two or more persons seeing an event may see or hear it differently.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, that you may think it deserves. In short, you may accept or reject the testimony of any witness, in whole or in part.

In addition, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

Authority

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 105.01 (6th ed.)

Instruction No. 12, Impeachment--Inconsistent Statement or Conduct

A witness may be discredited or impeached by contradictory evidence 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' present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness' other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is "knowingly" done, if voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Authority

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 105.02 (5th ed.)

Instruction No. 204, **After-Acquired Evidence**

Wayne State contends that it would have made the same decision to suspend, terminate and/or debar Robert Murray and Contract Design Group, Inc. because of after-acquired evidence from Contract Design's own files which indicate that Contract Design was altering certified payroll forms and submitting the forms to Wayne State for payment which supports Wayne State's decision to suspend, terminate and debar Robert Murray and Contract Design Group, Inc. If Wayne State proves by a preponderance of the evidence that Wayne State could have made the same decision and would have suspended, terminated and debarred Robert Murray and Contract Design Group, Inc. because of after-acquired evidence, you should limit any award of damages to the date that Wayne State would have made the decision to suspend, terminate and debar Robert Murray and Contract Design Group, Inc.as a result of the after-acquired evidence.

Instruction No. 13, Communications Between Court and Jury During Jury's Deliberation

If it becomes necessary during your deliberations to communicate with me, you may send a note by a bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me by any means other than a signed writing, and I will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

From the oath about to be taken by the bailiffs you will note that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person—not even to me—how the jury stands, numerically or otherwise, on the questions before you, until no fewer than 6 of the jurors are in agreement.

Authority
O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 106.08 (6th ed.)

Instruction No. 14, Introduction and Burden of Proof

This is a civil case. The plaintiffs have the burden of proving their case by what is called the preponderance of the evidence. That means the plaintiffs have to produce evidence which, considered in light of all the facts, leads you to believe that what the plaintiffs claim is more likely true than not. To put it differently, if you were to put the plaintiffs' and the defendants' evidence on opposite sides of the scales, the plaintiffs would have to make the scales tip somewhat on their side. If the plaintiffs fail to meet their burden, the verdict must be for the defendant.

"Establish by a preponderance of the evidence" means evidence, which as a whole, shows that the fact sought to be proved is more probable than not. In other words, a preponderance means that such evidence as, when considered and compared with the evidence opposed to it, has more convincing force, and produces in your minds belief that what is sought to be proved is more likely true than not true. This standard does not require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

Those of you who have sat for criminal cases will have heard of proof beyond a reasonable doubt. That requirement does not apply to a civil case; therefore, you should put it out of your mind.

Authority

Benchbook for U.S. District Court Judges (6th ed. March 2013)
O'Malley, Grenig & Lee, Federal Jury Practice and Instructions Civil § 104.01 (6th ed.)
(Combined Paragraph 3 from Instruction 27 by agreement of the Parties on 4/18/14).

Instruction No. 15, Section 1983 Introductory Instruction

Contract Design Group and Robert Murray are suing under Section 1983, a civil rights law passed by Congress that provides a remedy to persons who have been deprived of their federal constitutional rights under color of state law.

Authority

Model Civil Jury Instructions, United States Court of Appeals for the Third Circuit 4.1, Modified to fit the facts of the case

Instruction No. 16, Section 1983 – Elements of Claim

Contract Design Group and Robert Murray must prove both of the following elements by a preponderance of the evidence:

A: The defendant acted under color of state law.

B: While acting under color of state law, the defendant deprived Contract Design Group and Robert Murray of a federal constitutional right.

I will now give you more details on action under color of state law, after which I will tell you the elements Contract Design Group and Robert Murray must prove to establish the violation of their federal constitutional right.

Authority

Model Civil Jury Instructions, United States Court of Appeals for the Third Circuit 4.3, Modified to fit the facts of the case

Instruction No. 17, Section 1983 – Action under Color of State Law – Action under Color of State Law Is Not in Dispute

Because the individual defendants were officials of Wayne State University at the relevant time, I instruct you that each of them were acting under color of state law. In other words, this element of Contract Design Group's and Robert Murray's claim is not in dispute, and you must find that this element has been established.

Authority

Model Civil Jury Instructions, United States Court of Appeals for the Third Circuit 4.4.1, Modified to fit the facts of the case

Instruction No. 18, Section 1983 – Deprivation of a Federal Right

The second element of Contract Design Group's and Robert Murray's claim is that the defendant deprived Contract Design Group and Robert Murray of a federal constitutional right. In this case, Contract Design Group and Robert Murray allege that they were deprived of their constitutional right to procedural due process.

To prove Contract Design Group's and Robert Murray's claim, Contract Design Group and Robert Murray must prove the following things by a preponderance of the evidence:

> *First*: That either (a) Contract Design Group was deprived of its protected property interest in the 2008 blanket contract, or (b) Contract Design Group and Robert Murray were deprived of their protected liberty interest against being debarred from future bids based on a charge of fraud or dishonesty; and
>
> *Second*: That the defendant did not afford Contract Design Group and Robert Murray with adequate procedural rights before depriving Contract Design Group and Robert Murray of their protected interests.

Authority

- Model Civil Jury Instructions, United States Court of Appeals for the Third Circuit 4.5, Modified to fit the facts of the case;
- *Hahn v. Star Bank*, 190 F.3d 708, 716 (6th Cir. 1999) ("To establish a procedural due process claim pursuant to § 1983, plaintiffs must establish three elements: (1) that they have a life, liberty, or property interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, (2) that they were deprived of this protected interest within the meaning of the Due Process Clause, and (3) that the state did not afford them adequate procedural rights prior to depriving them of their protected interest.");
- *Contract Design Group, Inc. v. Wayne State Univ.*, No. 10–14702, 2013 WL 2199957, at *4 (E.D. Mich. May 20, 2013) (Amended order granting in part and denying in part defendants' motion for summary judgment, Dkt. 126, at Pg ID # 4596) ("To establish a procedural due process claim under § 1983, plaintiffs must satisfy three elements. They must show that: (1) they have a life, liberty, or property interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution; (2) they were deprived of this protected interest within the meaning of the Due Process Clause; and (3) the state did not afford them adequate procedural rights prior to depriving them of their protected interest.") (citing *Hahn v. Star Bank*, 190 F.3d 708, 716 (6th Cir. 1999));
- *Id*. at *3–4 (Dkt. 126, at Pg ID # 4595-96) ("A constitutionally protected property interest in a publicly bid contract exists when a bidder can show that it was actually awarded the contract and then deprived of it. In addition, although the right to bid on government contracts is not a property interest, a contractor's liberty interest is implicated when denial of a government contract is based on a charge of fraud or dishonesty. CDG was awarded

a publicly bid blanket contract in 2008, which was later terminated—and CDG was debarred from future bids—based on, inter alia, allegedly fraudulent behavior. ***Accordingly, Plaintiffs have a protected property interest in the terminated blanket contract and a protected liberty interest in their debarment from Wayne's projects***.") (emphasis added) (internal citations omitted)).

Instruction No. 205, **Due Process**

Procedural due process requirements are flexible and call for such procedural protections as the particular situation demands. Generally, procedural due process requires notice and an opportunity to be heard.

Wayne State University is a constitutionally autonomous entity. Under the Michigan Constitution, Wayne State has broad power to govern the university, including enacting rules and bylaws. Pursuant to that authority, Wayne State created the Debarment Policy at issue in this case. The sole consideration in this case of whether Robert Murray and Contract Design Group received due process is whether Defendants followed Wayne State's Debarment Policy. If you find that Defendants followed the Debarment Policy, you must find that Plaintiffs received adequate due process.

Instruction No. 19, Tortious Interference with Business Relationship or Expectancy Based Upon Defamation

Plaintiffs claim that defendants intentionally and improperly interfered with plaintiffs' business relationship or expectancy with non-Wayne State University customers by defamation. In order to establish the claim, plaintiff has the burden of proving each of the following:

1. Plaintiff had a business relationship or expectancy with non-Wayne State University customers at the time of the claimed interference.

2. The business relationship or expectancy had a reasonable likelihood of future economic benefit for plaintiff.

3. Defendant knew of the business relationship or expectancy at the time of the claimed interference.

4. Defendant intentionally interfered with the business relationship or expectancy.

5. Defendant improperly interfered with the business relationship or expectancy.

6. Defendant's conduct caused non-Wayne State University customers to disrupt or terminate the business relationship or expectancy.

7. Plaintiff was damaged as a result of defendant's conduct.

When I say that plaintiff must prove that defendant intentionally interfered with the business relationship or expectancy, I mean that

a. defendant's primary, but not necessarily sole, purpose was to interfere with plaintiff's business relationship or expectancy, or

b. defendant acted knowing that its conduct was certain or substantially certain to cause interference with plaintiff's business relationship or expectancy.

Improper interference is conduct that is fraudulent, not lawful, not ethical, or not justified under any circumstances. If defendant's conduct was lawful, it is still improper if it was done without justification and for the purpose of interfering with plaintiff's business relationship or expectancy, but plaintiff must specifically show affirmative acts by defendant that corroborate that defendant had the wrongful purpose of interfering with plaintiff's business relationship or expectancy.

Defamation is a statement (of fact) which is false in some material respect and is communicated to a third person by writing or words and has a tendency to harm a person's reputation. The statement must have been of and concerning the plaintiff.

Your verdict will be for the plaintiff if you find that plaintiff has proved all of these elements.

Your verdict will be for the defendant if you find that plaintiff has failed to prove any one of these elements.

Authority

M Civ JI 126.01
M Civ JI 118.02
M Civ JI 118.03
M Civ JI 126.03
M Civ JI 126.04
(Combined Instructions 54, 55, 56 and 57 into Instruction 53 to reflect the elements for tortious interference with business relations based upon defamation)

Instruction 208, Substantial Truth as a Defense to Defamation

It is an absolute defense to a claim of defamation that the alleged defamatory statement(s) was substantially true at the time the statement(s) was made. You must decide whether the statement(s) by Wayne State about Contract Design Group was substantially true. Thus, even if you find that Wayne State made a defamatory statement(s) about Contract Design Group that proximately caused it injury, you cannot award damages if you find that the statement(s) was substantially true.

The court instructs you that to be substantially true, the statement(s) does not need to be accurate as to exact facts or the most minute details of the transactions concerning Wayne State and Contract Design Group, but the law requires that the statement(s) be "substantially true."

Instruction No. 20, Account Stated

Contract Design claims that Wayne State owes it money on an account stated. To establish this claim, Contract Design must prove all of the following:

1. That Wayne State owed Contract Design money from previous financial transactions;
2. That Contract Design and Wayne State, by words or conduct, agreed that the amount stated in the account was the correct amount owed to Contract Design;
3. That Wayne State, by words or conduct, promised to pay the stated amount to Contract Design;
4. That Wayne State has not paid Contract Design any or all of the amount owed under this account; and
5. The amount of money Wayne State owes Contract Design.

Authority

Keywell & Rosenfeld v. Bithell, 254 Mich.App. 300, 331 (2002); *White v. Campbell*, 25 Mich. 463, 468 (1872).

Instruction No. 21, Introduction and Burden of Proof for Breach of Contract

This case involves a claim by Contract Design Group that Wayne State University breached a contract(s). A contract is a legally enforceable agreement to do or not to do something.

Contract Design Group has the burden of proof on the following:

(1) That there was a contract(s) between Contract Design Group and Wayne State University;
(2) That Wayne State University breached the contract(s); and
(3) That Contract Design Group suffered damages as a result of the breach.

If you find after considering all the evidence that Contract Design Group has proved these elements, then your verdict should be for Contract Design Group. However, if Contract Design Group fails to prove any one of these elements, your verdict should be for Wayne State University.

Authority

M Civ JI 142.01

Instruction No. 22, Offer—Defined

In order for there to be a contract, there must be an offer by one party, an acceptance of the offer by the other party, and consideration for the offer and acceptance. Mere discussions and negotiations are not a substitute for the formal requirements of a contract. I will now define those terms for you.

An offer to make a contract is a proposal to enter into a bargain, communicated by words or conduct, that would reasonably lead the person to whom the proposal is made to believe that the proposal is intended to create a contract. No particular form of an offer is required, although the essential terms of the contract must be reasonably clear, definite and certain.

Authority

M Civ JI 142.10

Instruction No. 23, Acceptance

Acceptance is a statement or conduct by a person receiving an offer that would reasonably lead the person who made the offer to believe that the material terms of the offer have been agreed to. A response that changes, adds to, or qualifies the material terms of the offer is not an acceptance. A material term is one that goes to the essence of the agreement.

Authority

M Civ JI 142.19

Instruction No. 24, Introduction to Contract

Contract Design Group has the burden to prove what the parties intended the contract to mean. The contract is to be interpreted so as to give effect to the parties' intentions. You cannot make for the parties a different contract than the parties made for themselves. It is the intent expressed or apparent in the writing that controls.

Authority

M Civ JI 142.50

Instruction No. 25, Conduct of Parties

You may consider the conduct of the parties after they entered into the contract and before they discovered that they disagreed with one another, as evidence of their agreed intent. It is up to you to decide what the conduct of the parties was, whether the conduct is reasonably related to the terms in question, and whether it reveals what they intended by the contract.

Authority

M Civ JI 142.55

Instruction No. 26, Must Consider All Parts of Contract

The written agreement, along with all attachments thereto, is to be considered in determining the existence or nature of the contractual duties owed by Defendants to Plaintiff. In determining the parties' intentions under the written contract, you should consider the agreement as a whole, including all of its parts and attachments.

Authority

M Civ JI 142.51

Instruction No. 27, Effect of Incorporated Documents

A contract can be made of several different documents if the parties intended that their agreement would include the various documents together. If you find that the parties entered into a contract that refers to other existing document[s] in such a manner as to establish that they intended to make the terms and conditions of that other document[s] part of their contract, you should interpret that incorporated document[s] as part of the contract between the parties according to the rules I have given you for interpreting contracts.

Authority

M Civ JI 142.52

Instruction No. 28, Words Given Ordinary Meaning

You should interpret the words of the contract by giving them their ordinary and common meaning.

Authority

M Civ JI 142.53

Instruction No. 29, Agency Relationship: Definitions of Agent and Principal

An "agent" is a person who is authorized by another to act on his / her / its behalf. The person / entity who has given the authority and has the right to control the agent is called the "principal."

The agent's authority may be expressed or implied.

Authority

M Civ JI 38.01

Instruction No. 30, Agency: Apparent Agency Relationship

Contract Design Group claims that George Dorset was acting as Wayne State University's agent. Wayne State University is bound by the acts of George Dorset as its agent if

a. Wayne State University put George Dorset in such a situation that an ordinary person familiar with the particular type of business involved in this matter would be justified in assuming that George Dorset had the authority to act on behalf of Wayne State University,

b. Contract Design Group assumed that George Dorset had the authority to act on behalf of Wayne State University, and

c. Contract Design Group was justified in assuming that George Dorset had the authority to act on behalf of Wayne State University.

Authority

M Civ JI 38.10

Wayne State claims that it is not liable to Contract Design for any alleged lump sum contracts because George Dorset did not have authority to enter into contracts on behalf of the University that is the basis of Contract Design's claims.

Wayne State's Board of Governors is the highest form of juristic person known to the law, a constitutional corporation of independent authority which, within the scope of its functions, is co-ordinate with and equal to that of the Michigan legislature.

Wayne State contends that only certain people at Wayne State have signatory authority to bind Wayne State to contracts. Michigan law charges those who make contracts with a governmental agency to know the limits of its power to contract. Wayne State claims that pursuant to University Policy 04-06, only John Davis and Jim Sears had authority to contract on behalf of Wayne State. Where a governmental agency or entity has a policy requiring certain people to sign contracts, there can be no valid contract without those signatories. If you find that someone besides John Davis or Jim Sears attempted to enter into a contract or contracts on behalf of Wayne State, there is no valid contract. If you find that John Davis or Jim Sears signed a contract on behalf of Wayne State, you may find that Wayne State entered into a contract.

Instruction No. 31, Modification

The parties to a contract can agree to modify a contract by changing one or more of its terms while continuing to be bound by the rest of the contract. Whether the contract was modified by the parties depends on their intent as shown by their words, whether written or oral, or their conduct. In this case, the parties agree that they entered into a contract.

To find that the terms of the original contract were changed, you must decide that there is clear and convincing evidence that:

1. there was a mutual agreement to modify or waive the terms of the original contract, and
2. unless the agreement to modify or waive the contract was in writing signed by Wayne State University, that Contract Design Group, Inc. gave consideration in exchange for the modification and that Wayne State University agreed to the change in the terms of the original contract.

If you decide this was shown by clear and convincing evidence, then the parties changed their original contract and they are bound by the contract as modified.

Otherwise, the parties did not change their original contract.

Authority

M Civ JI 142.19

Instruction No. 32, Measure of Damages— Personal and Property (Tortious interference)

If you decide that the Contract Design Group is entitled to damages for tortious interference with business relationship or expectancy, it is your duty to determine the amount of money which reasonably, fairly and adequately compensates Contract Design Group for each of the elements of damage which you decide has resulted from the acts of the defendant, taking into account the nature and extent of the injury.

You should include each of the following elements of damage which you decide has been sustained by Contract Design Group to the present time:

- loss of earning capacity

You should also include each of the following elements of damage which you decide Contract Design Group is reasonably certain to sustain in the future:

- loss of earning capacity

If any element of damage is of a continuing nature, you shall decide how long it may continue.

Which, if any, of these elements of damage has been proved is for you to decide based upon evidence and not upon speculation, guess or conjecture. The amount of money to be awarded for certain of these elements of damage cannot be proved in a precise dollar amount. The law leaves such amount to your sound judgment. Your verdict must be solely to compensate Contract Design Group for its damages, and not to punish the defendant.

Authority

M Civ JI 50.01

Instruction No. 33, Compensatory Damages--General Principles--Past and Future Damages--Future Earnings (Due Process)

If you find that the defendant is liable to Contract Design Group or Robert Murray on their due process claims, then you must determine an amount that is fair compensation for all of the plaintiff's damages. These damages are called compensatory damages. The purpose of compensatory damages is to make the plaintiff whole--that is, to compensate the plaintiff for the damage that the plaintiff has suffered. Compensatory damages are not limited to expenses that the plaintiff may have incurred because of his injury. If the plaintiff wins, the plaintiff is entitled to, in addition to his expenses incurred as a result of his injuries, compensatory damages for the physical injury, pain and suffering, mental anguish, shock, and discomfort that the plaintiff has suffered because of the defendant's conduct.

You may award compensatory damages only for injuries that the plaintiff proves were proximately caused by the defendant's allegedly wrongful conduct. The damages that you award must be fair compensation for all of the plaintiff's damages, no more and no less. Compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize the defendant. You should not award compensatory damages for speculative injuries, but only for those injuries which the plaintiff has actually suffered, or that the plaintiff is reasonably likely to suffer in the future.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that the plaintiff prove the amount of his losses with mathematical precision, but only with as much definiteness and accuracy as the circumstance permit.

You must use sound discretion in fixing an award of compensatory damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances.

You should consider the following elements of damages, to the extent you find them proved by a preponderance of the evidence.

A. Damages Accrued

If you find for the plaintiff, the plaintiff is entitled to recover an amount that will fairly compensate the plaintiff for any damages the plaintiff has suffered to date.

B. Calculation of Future Damages

If you find that the plaintiff is reasonably certain to suffer damages in the future from his injuries, then you should award the plaintiff the amount you believe would fairly compensate the plaintiff for such future damages.

C. Reduction of Future Damages to Present Value

An award of future damages necessarily requires that payment be made now for a loss that plaintiff will not actually suffer until some future date. If you should find that the plaintiff is entitled to future damages, including future earnings, then you must determine the present worth in dollars of such future damages.

If you award damages for loss of future earnings, you must consider two particular factors:

1. You should reduce any award by the amount of the expenses that the plaintiff would have incurred in making those earnings.

2. If you make an award for loss of future earnings, you must reduce it to present value by considering the interest that the plaintiff could earn on the amount of the award if the plaintiff made a relatively risk-free investment. The reason why you must make this reduction is because an award of an amount representing loss of future earnings is more valuable to the plaintiff if the plaintiff receives it today than if the plaintiff received it in the future, when the plaintiff would otherwise have earned it. It is more valuable because the plaintiff can earn interest on it for the period of time between the date of the award and the date the plaintiff would have earned the money. Thus you should reduce the amount of any award for loss of future earnings by the amount of interest that the plaintiff can earn on that amount in the future.

However, you must not make any adjustment to present value for any damages you may award for future pain and suffering or future mental anguish.

Authority

Martin A. Schwartz & George C. Pratt, *Sec. 1983 Litig. Jury Instructions* 18.01.1 (2d ed. 2012)

Instruction No. 34, Compensatory Damages--Pain, Suffering, and Emotional Distress

In assessing compensatory damages, you may include an amount for pain, suffering, and emotional distress that you determine to be reasonable compensation in the light of all the evidence in this case. We all know that the nature and degree of pain and mental distress may differ widely from person to person. Consequently, the law does not have a precise formula by which pain or emotional distress as an element of compensatory damages may be measured and reduced to dollars and cents. Instead of providing a formula for measuring these damages, the law leaves the determination of the amount of damages to the common sense and good judgment of you, the jurors. You should arrive at a monetary amount, in the light of your common knowledge and general experience, and without regard to sentiment, that you find to be fair, reasonable, and adequate. In other words, without favor, without sympathy, and without any precise formula, you must arrive at a sum of money that will justly, fairly, and adequately compensate the plaintiff for the actual pain, suffering, and emotional distress you find that the plaintiff endured as the direct result of any constitutional deprivation the plaintiff may have suffered. The amount of damages should be neither excessive nor inadequate. It should be fair, just, and reasonable.

Authority

Martin A. Schwartz & George C. Pratt, *Sec. 1983 Litig. Jury Instructions* 18.01.5 (2d ed. 2012)

Instruction No. 35, Compensatory Damages--Pain and Suffering--Loss of Enjoyment of Life

If you return a verdict for the plaintiff, you must include in your verdict an award of money to compensate the plaintiff for the conscious pain and suffering, if any, caused by the defendants in connection with the incident in question in this action. Conscious pain and suffering means pain and suffering of which there was some level of awareness by the plaintiff.

The plaintiff is entitled to recover a sum of money that would justly and fairly compensate the plaintiff for the conscious pain and suffering that the plaintiff has experienced as a direct result of the defendants' conduct. If you find that the plaintiff has sustained his burden of proof, the plaintiff may recover for pain, suffering, and mental anguish, including loss of enjoyment of life, incurred from the date of the incident through the present.

In determining the amount of damages, if any, to be awarded to the plaintiff for pain and suffering, you may take into consideration the effect that the plaintiff's injuries may have had on his ability to enjoy life. Loss of enjoyment of life includes the loss of one's ability to perform daily tasks, to participate in the activities that were a part of one's life before the incident, and to experience the pleasures of life. However, a person suffers a loss of his enjoyment of life only if the person is aware, at some level, of the loss that the plaintiff has suffered.

If you find that the plaintiff, as a direct result of the incident in question, suffered some loss in his ability to enjoy life, and that the plaintiff was aware of that loss, you may take that loss into consideration in determining the amount of damages to be awarded to the plaintiff for the plaintiff’s conscious pain and suffering.

Authority

Martin A. Schwartz & George C. Pratt, *Sec. 1983 Litig. Jury Instructions* 18.01.8 (2d ed. 2012)

Instruction No. 36, Introduction to Contract Damages

If you find that Wayne State University is liable to Contract Design Group for breach of contract, then you must determine the amount of money, if any, to award to Contract Design Group as contract damages. The following instructions tell you how to do that. If you find that Wayne State University is not liable, then you do not need to consider the subject of damages.

Contract Design Group must prove by a preponderance of the evidence the amount of any damages to be awarded. However, Contract Design Group is not required to prove its damages with mathematical precision because it is not always possible that a party can prove the exact amount of its damages. Therefore, it is necessary only that Contract Design Group prove its damages to a reasonable certainty or a reasonable probability. However, you may not award damages on the basis of guess, speculation or conjecture.

Authority

M Civ JI 142.30

Instruction No. 37, Contract Damages: Benefit of Bargain

Contract damages are intended to give the party the benefit of the party's bargain by awarding Contract Design Group a sum of money that will, to the extent possible, put Contract Design Group in as good a position as Contract Design Group would have been in had the contract(s) been fully performed. Contract Design Group should receive those damages naturally arising from the breach. Contract Design Group cannot recover a greater amount as damages than it could have gained by the full performance of the contract(s).

Authority

M Civ JI 142.31

Instruction No. 38, Lost Profits

Damages for breach of contract may include lost profits. Loss of profits may be recovered for a breach of contract if,

It is reasonably probable that the profits would have been earned except for the breach,
The amount of loss can be shown with a reasonable degree of certainty, and
There is a reliable basis in the evidence for computing the loss of profits.

Loss of profits is measured by net profits, not gross profits.

Authority
M Civ JI 142.32

Instruction No. 39, Consequential Damages

In addition to any award for damages naturally arising from the breach, you also may include amounts to compensate Contract Design Group for consequential damages. Consequential damages are those additional damages that were contemplated by both parties at the time they made the contract.

Authority

M Civ JI 142.34

Instruction No. 40, Joint and Several Liability

When two or more persons unite in causing an indivisible harm to a plaintiff, as is alleged in the present case, they can be charged with what the law calls joint and several liability for their acts. Joint and several liability means that each defendant is held liable for the entire amount of actual injury caused to the plaintiff as a result of the defendants' actions. The law does not require the plaintiff to establish how much of the injury was caused by each defendant. Rather, if Contract Design Group or Robert Murray is entitled to compensatory damages, the law permits a total sum of damages to be awarded to the plaintiff without breaking down how much each defendant is responsible for the damages. Contract Design Group and Robert Murray, however, will be entitled to only one recovery against the defendants.

Authority

Martin A. Schwartz & George C. Pratt, *Sec. 1983 Litig. Jury Instructions* 18.06.02 (2d ed. 2012)

Instruction No. 41, Mitigation

In fixing the amount of damages, you should not include any loss that Contract Design Group could have prevented by exercising reasonable care and diligence when it learned or should have learned of the breach. The burden is on Wayne State University to prove that Contract Design Group failed to minimize its damages and that the damages should be reduced by a particular amount as a result.

Authority

M Civ JI 142.35