CAUSE NO. 25-BC11A-0085

PANOLA OPERATING, LLC AND AXE DIRECTIONAL DRILLING, LLC,	§	IN THE BUSINESS COURT
Plaintiffs,	§	
v.	§	
	§	OF THE STATE OF TEXAS
IRONMAN RECYCLING LLC, SWD EAST TEXAS, LLC AND GEP HAYNESVILLE II, LLC,	§	
Defendants.	§	
	§	ELEVENTH DIVISION

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.

   The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

   A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

11. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

12. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this State to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

Definitions

"Panola" means Panola Operating, LLC.

"AXE" means AXE Directional Drilling, LLC.

"Ironman" means Ironman Recycling, LLC.

"GEP" means GEP Haynesville II, LLC.

"MSA" means the Master Service Agreement between GEP and AXE dated September 6, 2022, together with Work Order #100323 dated November 8, 2023.

"Facility" means the saltwater disposal facility located in Panola County, Texas, owned by Ironman.

"COMA" means the agreement between Ironman and Panola dated November 8, 2023, under which Panola served as operator of the Facility.

"LLCA" means the Limited Liability Company Agreement of Ironman Recycling, LLC.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

General Instructions

Some claims in this case—including claims that a party breached the LLCA, the COMA, or the parties' November 5, 2025 agreement—will be decided by the Court rather than by you. Do not consider whether any party is entitled to relief on those claims. Answer only the questions in this charge, as they are written.

During the trial you were sometimes excused so that I could hear evidence on those claims. Do not speculate about that evidence, and do not consider the fact that you were excused in answering any question. Answer the questions in this charge based solely on the evidence admitted in your presence and on these instructions.

Question No. 1

For this Question, you are instructed that the MSA required GEP to pay AXE for hauling and disposal services in accordance with the rates set forth in Work Order #100323.

Did GEP fail to comply with the MSA?

Answer "Yes" or "No."

Answer: NO

If you answered "Yes" to Question No. 1, then answer the following question. Otherwise, do not answer the following question and go to Question No. 4.

Question No. 2

Was GEP's failure to comply excused, in whole or part?

Failure to comply by GEP is excused by AXE's previous failure to comply with a material obligation of the MSA.

A failure to comply must be material. The circumstances to consider in determining whether a failure to comply is material include:

1. the extent to which GEP was deprived of the benefit it reasonably expected;

2. the extent to which GEP could be adequately compensated for the part of that benefit of which it was deprived; and

3. the likelihood that AXE would cure its failure, taking into account the circumstances, including any reasonable assurances.

A previous failure to comply excuses only the performance that remained to be rendered at the time of that failure. It does not discharge a claim for damages that has already arisen.

Answer "Yes" or "No."

Answer: _____

If you answered "Yes" to Question No. 1, answer Question No. 3, regardless of your answer to Question No. 2. Otherwise, do not answer Question No. 3.

Question No. 3

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate AXE for its damages, if any, resulting from GEP's failure to comply?

If you answered "Yes" to Question No. 2, include only damages resulting from failures to comply that were not excused. Do not exclude damages that had already accrued before the material breach on which you based your finding of excuse.

Consider the following elements of damages, if any, and none other.

> The difference, if any, between the agreed price of the barrel hauling and disposal services rendered by AXE and the amount GEP paid AXE for the barrel hauling and disposal services.

Do not add any amount for interest on damages, if any.

Answer in dollars and cents for damages, if any.

Answer: $_____

Question No. 4

Did AXE intentionally interfere with the COMA with respect to Panola's collection of Ironman's disposal revenues?

> Interference is intentional if committed with the desire to interfere with the contract or with the belief that interference is substantially certain to result.

Answer "Yes" or "No."

Answer: YES

If you answered "Yes" to Question No. 4, then answer the following question. Otherwise, do not answer the following question.

Question No. 5

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Ironman for its damages, if any, proximately caused by such interference?

Consider the following elements of damages, if any, and none other.

Do not add any amount for interest on damages, if any.

Answer in dollars and cents for damages, if any.

The amount of disposal revenues that AXE received from GEP for disposal at the Facility and that were not collected in Ironman's operating account as a result of such interference.

Answer: $ 2,510,629.00/100

Question No. 6

Did Panola commit fraud against Ironman with respect to any of the following subjects?

(a) the age, model, or capacity of pumps at the Facility, or

(b) the cause of the March 2024 spill at the Facility, or

(c) the characterization, tracking, or treatment of the AXE receivable

Fraud occurs when—

1. a party makes a material misrepresentation, and

2. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and

3. the misrepresentation is made with the intention that it should be acted on by the other party, and

4. the other party justifiably relies on the misrepresentation and thereby suffers injury.

"Misrepresentation" means a false statement of fact.

"Material" means a reasonable person would attach importance to and would be induced to act on the information in determining its choice of actions in the transaction in question.

Answer "Yes" or "No" as to each of the following subjects.

(a) the age, model, or capacity of pumps at the Facility

Answer: YES

(b) the cause of the March 2024 spill at the Facility

Answer: No

(c) the characterization, tracking, or treatment of the AXE receivable

Answer: No

Question No. 7

Did Panola commit fraud by nondisclosure against Ironman with respect to the disposal revenues that Panola reported as an account receivable owed by AXE to Ironman ?

Fraud by nondisclosure occurs when—

1. a party fails to disclose a material fact within the knowledge of that party, and

2. the party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth, and

3. the party intends to induce the other party to take some action or refrain from acting by failing to disclose the fact, and

4. the other party justifiably relies on the nondisclosure and suffers injury as a result of acting without knowledge of the undisclosed fact.

"Material" means a reasonable person would attach importance to and would be induced to act on the information in determining its choice of actions in the transaction in question. Panola had a duty to disclose a fact only if Panola made a partial disclosure that, although true, conveyed a false impression, and the fact was necessary to keep that disclosure from being misleading.

Answer "Yes" or "No."

Answer: YES

If you answered "Yes" to any subpart of Question No. 6, then answer the following question. Otherwise, do not answer the following question.

Question No. 8

Answer only the corresponding subpart to which you answered "Yes" in Question No. 6.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Ironman for its damages, if any, that resulted from the fraud you found in Question No. 6?

Do not add any amount for interest on damages, if any.

Answer in dollars and cents for damages, if any.

Consider the following elements of damages, if any, and none other. You shall not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any.

(a) The reasonable costs that Ironman incurred as a result of its reliance on Panola's misrepresentations about the age, model, or capacity of pumps at the Facility.

Answer: $ 120,000

(b) The reasonable costs that Ironman incurred as a result of its reliance on Panola's misrepresentations about the cause of the March 2024 spill at the Facility.

Answer: $_____

(c) The loss that Ironman incurred as a result of its reliance on Panola's misrepresentations about the characterization, tracking, or treatment of the AXE receivable.

Answer: $_____

If you answered "Yes" to Question No. 7, then answer the following question. Otherwise, do not answer the following question.

Question No. 9

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Ironman for its damages, if any, that resulted from the fraud by nondisclosure you found in Question No. 7?

Do not add any amount for interest on damages, if any.

Answer in dollars and cents for damages, if any.

Consider the following elements of damages, if any, and none other.

The losses that Ironman incurred as a result of its reliance on Panola's nondisclosure concerning the disposal revenues reported as an account receivable owed by AXE to Ironman.

Answer: $ 0.00

Answer part (a) of the following question only if you unanimously answered "Yes" to any part of Question No. 6 and you found an amount of damages greater than zero in the corresponding part of Question No. 8. Answer part (b) of the following question only if you unanimously answered "Yes" to Question No. 7 and you found an amount of damages greater than zero in Question No. 9. Otherwise, do not answer that part of the following question.

To answer "Yes" to any part of the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

Question No. 10

Do you find by clear and convincing evidence that the harm to Ironman resulted from fraud?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Fraud" means, for part (a), fraud as defined in Question No. 6 and, for part (b), fraud by nondisclosure as defined in Question No. 7.

Answer "Yes" or "No" for each:

(a) Fraud as defined in Question No. 6

Answer only the corresponding subpart to which you unanimously answered "Yes" in Question No. 6 and you found an amount of damages greater than zero in the corresponding part of Question No. 8.

(1) the age, model, or capacity of pumps at the Facility

Answer: YES

(2) the cause of the March 2024 spill at the Facility

Answer: _____

(3) the characterization, tracking, or treatment of the AXE receivable

Answer: _____

(b) Fraud by nondisclosure as defined in Question No. 7

Answer: _____

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

   a. have the complete charge read aloud if it will be helpful to your deliberations;

   b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;

   c. give written questions or comments to the bailiff who will give them to the judge;

   d. write down the answers you agree on;

   e. get the signatures for the verdict certificate; and

   f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.

2. If ten jurors agree on every answer, those ten jurors sign the verdict. If eleven jurors agree on every answer, those eleven jurors sign the verdict. If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

4. There are some special instructions before Question No. 10 explaining how to answer that question. Please follow the instructions. You may answer "Yes" to any part of Question No. 10 only if all twelve of you agree. If you answer "Yes" to any part of Question No. 10, the presiding juror must also sign the Additional Certificate.

Do you understand these instructions? If you do not, please tell me now.

_____
JUDGE PRESIDING

Verdict Certificate

Check one:

_____ Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

_____ _____

Signature of Presiding Juror Printed Name of Presiding Juror

_____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

✓ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

	Signature	Name Printed
1.		JEFFREY M. HART
2.	K. Harmon	Keith Harmon
3.	Guillermo Rocha	Guillermo Rocha
4.	Laura Castellanos	Laura Castellanos
5.	Carl Summers	Carl Summers
6.	Maria Purdis	Maria Purdis
7.	Sarah Edwards	Sarah Edwards
8.	Jesus R. Gutierrez	Jesus R. Gutierrez
9.	Nancy B. Gunn	Nancy B. Gunn
10.	Chwoodside	CHALAINE R. WOODSIDE
11.		

Additional Certificate

If you have answered "Yes" to any part of Question No. 10, then you must sign this certificate also.

I certify that the jury was unanimous in answering each question checked below. All twelve of us agreed to each of the answers to the checked questions. The presiding juror has signed the certificate for all twelve of us.

✓ Question No. 6

_____ Question No. 7

✓ Question No. 10(a)

_____ Question No. 10(b)

Signature of Presiding Juror

JEFFREY M. HART
Printed Name of Presiding Juror