



CFM

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

INDUSTRIAL
LAMINATES/NORPLEX, INC.,

Plaintiff,

v.

SECUR*HOLDINGS, INC.,

Defendant.

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No. 3:08-CV-361-M

COURT'S CHARGE TO THE JURY

Members of the Jury:

GENERAL INSTRUCTIONS

Now that you have heard the evidence, it is my duty to instruct you as to the law that is applicable to this case. I will instruct you on the law that you should apply in answering certain questions of fact, which I will read to you in a few moments. The attorneys then will have the opportunity to make their closing arguments. You are instructed that the statements and arguments of counsel are not evidence and are not instructions on the law. They are intended only to assist the jury in understanding the evidence and the contentions of the parties to this suit. After the attorneys make their closing arguments, I will give you some additional instructions, after which you will retire to commence your deliberations. In arriving at your verdict, it is your duty to follow the rules of law which I give to you and find the facts of this case from the evidence introduced at trial and in accordance with these rules of law. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me.

Unless you are otherwise instructed, the evidence in the case consists of the sworn

testimony of the witnesses, regardless of who may have called them and whether they testify live or by deposition; and all exhibits received in evidence, regardless of who may have produced them; and all facts that may have been admitted or stipulated.

You should not consider or be influenced by the fact that during the trial of this case, counsel have made objections to the testimony, as it is their duty to do so, and it is the duty of the Court to rule on those objections in accordance with the law. Nothing in these instructions nor anything said or done by the Court during trial is, or was, made for the purpose of suggesting to you what verdict I think you should find.

Remember at all times that you are the sole and exclusive judges of the facts. As I have said, I will give you the law that you must apply to the facts of the case, but you-and only you-must determine what the facts are. Your judgment of the facts should be your own unbiased judgment, uninfluenced by the Court, except with respect to the law of the case as the Court instructs you. It will always be your recollection that will be binding. Counsel may say in their argument that something is a fact. If that is not your recollection, disregard counsel's statement.

Generally speaking, there are two types of evidence a jury may consider in properly finding the truth as to the facts in this case. One is direct evidence - such as testimony of an eyewitness. The other is indirect or circumstantial evidence - the proof of a chain of circumstances which points to the existence or non-existence of certain facts. As a general rule, the law makes no distinction between direct and circumstantial evidence but simply requires that the jury find the facts from the evidence, both direct and circumstantial. You will rely on your own good judgment and common sense in considering the evidence and determining the weight to be given it.

You are not to consider as evidence any testimony or document to which the Court

sustained objections and ruled inadmissible. While you should consider only the evidence admitted in the case, you are permitted to draw reasonable inferences and deductions from the evidence. The expression “to draw an inference” means to find that a fact exists based upon proof of another fact. An inference may be drawn only if it is reasonable and logical, not if it is speculative. Therefore, in deciding whether to draw an inference, you must consider all the facts in light of reason, common sense and experience. After you have done that, the question whether to draw a particular inference is for you to decide.

It is the function of the jury to determine the credibility of each witness and to determine the weight to be given the witness’s testimony. Consider all of the circumstances under which the witness testified, the interest, if any, the witness has in the outcome of this case, the witness’s appearance and demeanor while on the witness stand, the witness’s apparent candor and fairness, or lack thereof, the reasonableness or unreasonableness of the witness’s testimony, and the extent to which the witness is contradicted or supported by other credible evidence.

A witness may be discredited, or “impeached,” by contradictory evidence, by showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness said or did something, or failed to say or do something, which is inconsistent with the present testimony of that witness. If you believe that any witness has been impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you think it deserves.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people may forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was an intentional falsehood or

simply an innocent lapse of memory; and the significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

The testimony of a single witness, which produces in your minds the belief in the likelihood of truth, is sufficient for the proof of any fact, even though a greater number of witnesses may have testified to the contrary, if you believe that witness and have considered all the other evidence.

Witnesses who, by education and experience, have become experts in some art, science, profession, or calling, may state their opinions as to relevant and material matters, in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case, and give it such weight as you may 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 that it is outweighed by other evidence, you may disregard the opinion entirely.

You have heard references to testimony from depositions. A deposition is the sworn, recorded answers to questions asked a witness in advance of the trial. Under some circumstances, if a witness cannot be present to testify from the witness stand, that witness's testimony may be presented, under oath, in the form of a deposition. Some time before trial, attorneys representing the parties in this case questioned this witness under oath. A court reporter was present and recorded the testimony. The questions and answers have been read or shown to you during this trial. This deposition testimony is entitled to the same consideration as if the witness had been present and had testified from the witness stand in court.

Certain charts and summaries have been shown to you in order to help explain the facts

disclosed by the books, records, and other documents received into evidence in the case, as well as the testimony of some of the witnesses. If you believe such charts or summaries do not accurately reflect facts or figures shown by the evidence in this case, you should disregard them.

Do not let bias, prejudice or sympathy play any part in your deliberations. The parties to this litigation must be treated exactly alike insofar as their rights are concerned.

Throughout these instructions, I will refer to Industrial Laminates/Norplex, Inc. as "Norplex" or as "Plaintiff." I will refer to Secur*Holdings, Inc. as "Secur" or as "Defendant."

Any notes that you have taken during this trial are only aids to memory. If your memory should differ from your notes, then you should rely on your memory and not on the notes. The notes are not evidence. A juror who has not taken notes should rely on his or her independent recollection of the evidence. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

As used in this charge, "preponderance of the evidence" simply means evidence that persuades you that a claim is more likely true than not true. In determining whether any fact has been proved by a preponderance of the evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them. It is undisputed that Secur did not pay invoices submitted to it by Norplex, within 30 days of submission of the invoices. The total amount of the unpaid invoices is \$112,512.16. Secur claims that various issues justify its non-payment and on those issues, also called defenses, it has the burden of proof. Secur also has claims for damages from Norplex, and on those issues, Secur has the burden of proof.

Defendant has the burden of proof by a preponderance of the evidence on its claims and defenses unless I instruct you otherwise. If the proof fails to establish any essential part of

Secur's claims or defenses by a preponderance of the evidence, you should find for Norplex as to that claim or defense. Where Norplex has the burden of proof on a defense to Secur's claims that will be noted with an asterisk at the number of a question. If the proof fails to establish any essential part of Norplex's defenses by a preponderance of the evidence, you should find for Secur as to that defense.

You should not interpret the fact that I have given instructions about Secur's claimed damages as an indication in any way that I believe that one party should, or should not, win this case. In answering questions about damages, if any, 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 as to what a 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. Do not add any amount for interest on damages, if any.

This is the law that applies to this case and which should control your deliberations.

QUESTIONS AND SPECIFIC INSTRUCTIONS

QUESTION NO. 1

Was Secur's failure to pay in full the invoices for the products ordered under Secur's Revised Purchase Order #1017, and received from Norplex, excused by a previous failure of Norplex to comply with a material obligation of that same Purchase Order?

In answering this Question, you are instructed that the circumstances to consider in determining whether a failure to comply is material include:

- a. The extent to which the injured party was deprived of the benefit which it reasonably expected;
- b. The extent to which the injured party can be adequately compensated for the part of that benefit of which it was deprived;
- c. The likelihood that the party failing to perform or to offer to perform cured its failure, taking into account the circumstances, including any reasonable assurances; and
- d. The extent to which the behavior of the party failing to perform or to offer to perform comported with standards of good faith and fair dealing.

Answer "Yes" or "No."

Answer: No

If your answer to Question 1 is "Yes," then answer Question 2. Otherwise, go to Question 3.

QUESTION NO. 2

Was Secur's failure to pay in full the invoices for the products received from Norplex excused by fraud committed by Norplex against Secur by representations about the NP504QB delivered to Secur?

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 the truth and as a positive assertion;
- c. the misrepresentation is made with the intention that it should be acted on by the other party; and
- d. the other party reasonably relies on the misrepresentation and suffers injury as a result.

"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."

Answer: _____

QUESTION NO. 3

Is Norplex estopped from asserting its claims against Secur?

In answering this question, you are instructed as follows.

Norplex is "estopped," or prevented, from asserting its claims, if all of the following circumstances occurred:

1. Norplex
 - a. by words or conduct made a false representation;

- b. with knowledge of the facts or with knowledge or information that would lead a reasonable person to discover the facts; and
- c. with the intention that Secur would rely on the false representation in acting or deciding not to act; and

2. Secur

- a. did not know and had no means of knowing the real facts; and
- b. relied to its detriment on the false representation.

Answer "Yes" or "No."

Answer: No

QUESTION NO. 4

With respect to sub-parts (a) through (d), "Confidential Information" refers to that term as defined in the December 6, 2005 or September 12, 2006 Non-Disclosure and Confidentiality Agreement entered into between Secur and Norplex.

(a) Do you find NP504QB is "Confidential Information" belonging to Secur?

Answer "Yes" or "No."

Answer: NO

(b) Do you find ballistics and blasts test results conducted by Secur are "Confidential Information"?

Answer "Yes" or "No."

Answer: YES

(c) Do you find market or business opportunities Secur shared with Norplex are "Confidential Information"?

Answer "Yes" or "No."

Answer: NO

(d) Do you find changes to the manufacturing process of the laminate to improve ballistic effectiveness discussed between Norplex and Secur are "Confidential Information"?

Answer "Yes" or "No."

Answer: YES

If you answered "Yes" to any of Questions 4(a), 4(b), 4(c), or 4(d), then answer only the corresponding sub-part or subparts of Question 5. Otherwise go to Question 6.

QUESTION NO. 5

Did Norplex fail to comply with the December 6, 2005 or September 12, 2006 Non-Disclosure and Confidentiality Agreement with respect to any Confidential Information found by you in answer to Question No. 4(a) through (d)?

In answering this Question, you are instructed that Norplex failed to comply with the Non-Disclosure and Confidentiality Agreement if it used confidential information or disclosed confidential information in violation of the Non-Disclosure and Confidentiality Agreement.

(a) Did Norplex fail to comply with respect to any Confidential Information you found in 4(a)?

Answer "Yes" or "No."

Answer: _____

(b) Did Norplex fail to comply with respect to any Confidential Information you found in 4(b)?

Answer "Yes" or "No."

Answer: NO

(c) Did Norplex fail to comply with respect to any Confidential Information you found in

4(c)?

Answer "Yes" or "No."

Answer: _____

(d) Did Norplex fail to comply with respect to any Confidential Information you found in 4(d)?

Answer "Yes" or "No."

Answer: NO

QUESTION NO. 6

In answering this Question, you are instructed that a "trade secret" means the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes.

In determining whether information constitutes a trade secret you should consider:

- (1) the extent to which the information is known outside the business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) the extent of the measures taken to guard the secrecy of the information;
- (4) the value of the information to the owner of the trade secret and to the owner's competitors;
- (5) the amount of effort or money expended by the owner of the trade secret in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

A party claiming a trade secret is not required to meet all six factors, and other

circumstances could be relevant when determining whether information constitutes a trade secret.

A trade secret must indeed be a secret. "Secrecy" in this sense is not limited solely to confidentiality, but also requires that the information is not generally known or readily ascertainable by independent investigation.

(a) Do you find NP504QB to be a trade secret belonging to Secur?

Answer "Yes" or "No."

Answer: NO

(b) Do you find ballistics and blasts test results conducted by Secur to be a trade secret belonging to Secur?

Answer "Yes" or "No."

Answer: YES

(c) Do you find market or business opportunities Secur shared with Norplex to be a trade secret belonging to Secur?

Answer "Yes" or "No."

Answer: NO

(d) Do you find changes to the manufacturing process of the laminate to improve ballistic effectiveness discussed between Norplex and Secur to be a trade secret belonging to Secur?

Answer "Yes" or "No."

Answer: YES

If you answered "Yes" to any of Questions 6(a), 6(b), 6(c), or 6(d), then answer only the corresponding subpart or subparts of Questions 7, 8, 9, and 10. Otherwise go to Question 11.

QUESTION NO. 7

Did Norplex unfairly compete with Secur by misappropriating the trade secret(s) you

found in 6(a) through (d) from Secur?

To prevail, Secur must prove:

- a. The existence of a trade secret belonging to Secur, which Secur created through extensive time, labor, skill, and money;
- b. Norplex used that product in competition with Secur, gaining a special advantage, or "free ride," in that competition, because Norplex was burdened with little or none of the expense incurred by Secur in developing the trade secret; and
- c. Secur suffered damage as a result.

(a) Do you find that Norplex unfairly competed with respect to a trade secret you found in 6(a)?

Answer "Yes" or "No."

Answer: _____

(b) Do you find that Norplex unfairly competed with respect to a trade secret you found in 6(b)?

Answer "Yes" or "No."

Answer: NO

(c) Do you find that Norplex unfairly competed with respect to a trade secret you found in 6(c)?

Answer "Yes" or "No."

Answer: _____

(d) Do you find that Norplex unfairly competed with respect to a trade secret you found in 6(d)?

Answer "Yes" or "No."

Answer: NO

QUESTION NO. 8

Did Norplex misappropriate a trade secret belonging to Secur?

To prove misappropriation, Secur must prove that:

- (1) Secur disclosed to Norplex a trade secret belonging to Secur;
- (2) Norplex actually made commercial use of or disclosed Secur's trade secret, while seeking a profit; and
- (3) The use or disclosure of Secur's trade secret caused Secur to suffer damages.

"Use" of a trade secret means commercial use, by which a person seeks to profit from the use of the secret. To "disclose" a trade secret means to make it generally known to the public, a third-party or otherwise, such that it is not substantially secret.

(a) Do you find that Norplex misappropriated a trade secret you found in 6(a)?

Answer "Yes" or "No."

Answer: _____

(b) Do you find that Norplex misappropriated a trade secret you found in 6(b)?

Answer "Yes" or "No."

Answer: NO

(c) Do you find that Norplex misappropriated a trade secret you found in 6(c)?

Answer "Yes" or "No."

Answer: _____

(d) Do you find that Norplex misappropriated a trade secret you found in 6(d)?

Answer "Yes" or "No."

Answer: NO

QUESTION NO. 9

For the purpose of this question only, you are instructed as follows.

“Trade secret” means the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes. To “steal” means to unlawfully appropriate property with the intent to deprive the owner of the property. “Article” means any object, material, device, or substance or any copy thereof, including a writing, recording, drawing, sample, specimen, prototype, model, or photograph. “Copy” means a facsimile, replica, photograph, or other reproduction of an article or a note, drawing, or sketch made of or from an article. “Representing” means describing, depicting, containing, constituting, reflecting, or recording.

Did Norplex knowingly, and without Secur’s effective consent:

(1) Steal a trade secret belonging to Secur

(a) that you found in 6(a)?

Answer “Yes” or “No.”

Answer: _____

(b) that you found in 6(b)?

Answer “Yes” or “No.”

Answer: NO

(c) that you found in 6(c)?

Answer “Yes” or “No.”

Answer: _____

(d) that you found in 6(d)? NO

(2) make a copy of an article representing a trade secret belonging to Secur

(a) that you found in 6(a)?

Answer "Yes" or "No."

Answer: _____

(b) that you found in 6(b)?

Answer "Yes" or "No."

Answer: NO

(c) that you found in 6(c)?

Answer "Yes" or "No."

Answer: _____

(d) that you found in 6(d)?

Answer "Yes" or "No."

Answer: NO

(3) communicate or transmit a trade secret belonging to Secur

(a) that you found in 6(a)?

Answer "Yes" or "No."

Answer: _____

(b) that you found in 6(b)?

Answer "Yes" or "No."

Answer: NO

(c) that you found in 6(c)?

Answer "Yes" or "No."

Answer: _____

(d) that you found in 6(d)?

Answer "Yes" or "No."

Answer: NO

If you have answered "Yes" to any subpart of Question 9, then answer only the corresponding subpart or subparts of Question 10. Otherwise, go to Question 11.

QUESTION NO. 10* (Norplex Burden)

Was the conduct found by you in your answer to any part of Question No. 9 excused?

You are instructed that Norplex's conduct is excused if it neither knew nor should have known of Secur's belief that the trade secret belonged to Secur.

(a) Was the conduct found by you in Question 9(1)(a) excused?

Answer "Yes" or "No."

Answer: _____

(b) Was the conduct found by you in Question 9(1)(b) excused?

Answer "Yes" or "No."

Answer: _____

(c) Was the conduct found by you in Question 9(1)(c) excused?

Answer "Yes" or "No."

Answer: _____

(d) Was the conduct found by you in Question 9(1)(d) excused?

Answer "Yes" or "No."

Answer: _____

(e) Was the conduct found by you in Question 9(2)(a) excused?

Answer "Yes" or "No."

Answer: _____

(f) Was the conduct found by you in Question 9(2)(b) excused?

Answer "Yes" or "No."

Answer: _____

(g) Was the conduct found by you in Question 9(2)(c) excused?

Answer "Yes" or "No."

Answer: _____

(h) Was the conduct found by you in Question 9(2)(d) excused?

Answer "Yes" or "No."

Answer: _____

(i) Was the conduct found by you in Question 9(3)(a) excused?

Answer "Yes" or "No."

Answer: _____

(j) Was the conduct found by you in Question 9(3)(b) excused?

Answer "Yes" or "No."

Answer: _____

(k) Was the conduct found by you in Question 9(3)(c) excused?

Answer "Yes" or "No."

Answer: _____

(l) Was the conduct found by you in Question 9(3)(d) excused?

Answer "Yes" or "No."

Answer: _____

(m) Was the conduct found by you in Question 9(4)(a) excused?

Answer "Yes" or "No."

Answer: _____

(n) Was the conduct found by you in Question 9(4)(b) excused?

Answer "Yes" or "No."

Answer: _____

(o) Was the conduct found by you in Question 9(4)(c) excused?

Answer "Yes" or "No."

Answer: _____

(p) Was the conduct found by you in Question 9(4)(d) excused?

Answer "Yes" or "No."

Answer: _____

QUESTION NO. 11

Did Norplex fail to comply with Secur's Revised Purchase Order #1017 by failing to deliver to Secur the laminate ordered by Secur's Revised Purchase Order #1017?

You are instructed that the circumstances to consider in determining whether a failure to comply is material include:

- a. The extent to which the injured party was deprived of the benefit which it reasonably expected;
- b. The extent to which the injured party can be adequately compensated for the part of that benefit of which it was deprived;
- c. The likelihood that the party failing to perform or to offer to perform cured

its failure, taking into account the circumstances, including any reasonable assurances; and

- d. The extent to which the behavior of the party failing to perform or to offer to perform comported with standards of good faith and fair dealing.

Answer "Yes" or "No."

Answer: NO

If you answered "Yes" to Question 11, then answer Question 12. Otherwise go to Question 13.

QUESTION NO. 12* (Norplex Burden)

Was Norplex's failure to comply with obligations owed to Secur under Secur's Revised Purchase Order #1017 excused by a previous failure by Secur to comply with a material obligation of Secur's Revised Purchase Order #1017?

You are instructed that the circumstances to consider in determining whether a failure to comply is material include:

- a. The extent to which the injured party was deprived of the benefit which it reasonably expected;
- b. The extent to which the injured party can be adequately compensated for the part of that benefit of which it was deprived;
- c. The likelihood that the party failing to perform or to offer to perform cured its failure, taking into account the circumstances, including any reasonable assurances; and
- d. The extent to which the behavior of the party failing to perform or to offer to perform comported with standards of good faith and fair dealing.

Answer "Yes" or "No."

Answer: _____

QUESTION NO. 13

Did Norplex fail to comply with an implied warranty of fitness for a particular purpose for the laminate delivered by Norplex to Secur?

You are instructed that to establish that Norplex made an implied warranty of fitness for a particular purpose, Secur must prove that:

- (1) Norplex had reason to know the particular purpose for which Secur required the goods at the time of contracting;
- (2) Norplex had reason to know that Secur was relying on Norplex's skill or judgment to select or furnish suitable goods; and
- (3) The goods supplied by Norplex were unfit for that particular purpose.

Answer "Yes" or "No."

Answer: NO

QUESTION NO. 14

Did Norplex fail to comply with an express warranty that the laminate delivered to Secur was the laminate ordered by Secur?

You are instructed that an express warranty is:

- (1) Any affirmation of fact or promise made by Norplex to Secur which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise;
- (2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description; or

(3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

It is not necessary to the creation of an express warranty that Norplex use formal words such as "warrant" or "guarantee" or that it have a specific intention to make a warranty, but neither an affirmation merely of the value of the goods nor a statement purporting to be merely Norplex's opinion of the goods creates a warranty.

Answer "Yes" or "No."

Answer: No

If you answered "Yes" to Question No. 13 or 14, then answer Question 15. Otherwise go to Question 16.

QUESTION NO. 15* (Norplex Burden)

Did Secur fail to notify Norplex of any breach of warranty by Norplex within a reasonable time after Secur discovered or should have discovered any such breach of warranty?

Answer "Yes" or "No."

Answer: _____

QUESTION NO. 16

Did Norplex commit fraud against Secur by misleading Secur into believing that the NP504QB that was delivered to Secur was the NP504QB that Secur had ordered?

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 the truth and as a positive assertion;
- c. The misrepresentation is made with the intention that it should be acted on by the

other party; and

- d. The other party reasonably relies on the misrepresentation and suffers injury as a result.

“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.”

Answer: NO

If you answered “Yes” as to Question 5, then answer Question 17(a). If you answered “Yes” as to Question 11, then answer Question 17(b). If you answered “Yes” as to Question 13, then answer Question 17(c). If you answered “Yes” as to Question 14, then answer Question 17(d). Otherwise, go to Question 18.

QUESTION NO. 17* (Norplex Burden)

You are instructed that waiver is an intentional surrender of a known right or intentional conduct inconsistent with claiming the right.

- (a) Has Secur waived Norplex’s failure, if any, to comply with the December 6, 2005 or September 12, 2006 Non-Disclosure and Confidentiality Agreement?

Answer “Yes” or “No.”

Answer: _____

- (b) Has Secur waived Norplex’s failure, if any, to comply with Secur’s Revised Purchase Order #1017?

Answer “Yes” or “No.”

Answer: _____

- (c) Has Secur waived Norplex’s failure, if any, to comply with an implied warranty of

fitness for a particular purpose for the laminate delivered by Norplex to Secur?

Answer "Yes" or "No."

Answer: _____

(d) Has Secur waived Norplex's failure, if any, to comply with an express warranty that the laminate delivered to Secur was the laminate ordered by Secur?

Answer "Yes" or "No."

Answer: _____

If you answered "Yes" as to Question 5, then answer Question 18(a). If you answered "Yes" as to Question 11, then answer Question 18(b). If you answered "Yes" as to Question 13, then answer Question 18(c). If you answered "Yes" as to Question 14, then answer Question 18(d). Otherwise, go to Question 19.

QUESTION NO. 18* (Norplex Burden)

You are instructed that Secur is "estopped," or prevented, from asserting its claims against Norplex if it is attempting to assert, to Norplex's disadvantage, a right inconsistent with a position Secur previously took, and it would be unconscionable to allow Secur to maintain a position inconsistent with one to which it acquiesced, or from which it accepted a benefit.

(a) Is Secur estopped from asserting Norplex's failure, if any, to comply with the December 6, 2005 or September 12, 2006 Non-Disclosure and Confidentiality Agreement?

Answer "Yes" or "No."

Answer: _____

(b) Is Secur estopped from asserting Norplex's failure, if any, to comply with Secur's Revised Purchase Order #1017?

Answer "Yes" or "No."

Answer: _____

(c) Is Secur estopped from asserting Norplex's failure, if any, to comply with an implied warranty of fitness for a particular purpose for the laminate delivered by Norplex to Secur?

Answer "Yes" or "No."

Answer: _____

(d) Is Secur estopped from asserting Norplex's failure, if any, to comply with an express warranty that the laminate delivered to Secur was the laminate ordered by Secur?

Answer "Yes" or "No."

Answer: _____

QUESTION NO. 19* (Norplex Burden)

Does laches apply to Secur's conduct?

"Laches" means

- (1) an unreasonable delay by Secur in asserting its rights against Norplex; and
- (2) a good faith change of position by Norplex to its detriment because of the delay.

Answer "Yes" or "No."

Answer: YES

In answering Questions 20-24, you are instructed that 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. Secur may not sit idly by when presented with an opportunity to reduce any damages it claims to have incurred. However, it is not required to

exercise unreasonable efforts or incur unreasonable expenses in mitigating damages. Secur may not recover for any item of damage that it could have avoided through reasonable effort. If you find Secur unreasonably failed to take advantage of an opportunity to lessen any damages you find it suffered, you should deny Secur recovery for those damages that it would have avoided had it taken advantage of the opportunity.

QUESTION NO. 20

If you answered "Yes" to Question 5, then answer the following Question. Otherwise do not answer the following Question.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Secur for its damages, if any, that resulted from Norplex's failure to comply with its obligations under the Non-Disclosure and Confidentiality Agreement with Secur?

In answering this Question, you may consider any loss proven by Secur to have resulted from general or particular requirements and needs of Secur that were a natural, probable, and foreseeable consequence of Norplex's failure to comply and which could not be reasonably prevented.

Do not add any amount for interest on damages, if any. Answer in dollars and cents, or zero.

Answer: \$ _____

QUESTION NO. 21

If you answered "Yes" to Questions 7, 8 or 9, then answer the following Question with respect only to the Question or Questions 7, 8, or 9 to which you answered, "Yes." Otherwise do not answer the following Question.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Secur for its damages, if any, that were proximately caused by Norplex's improper use of Secur's trade secret that you have found?

You are instructed that "proximate cause" means that cause which, in a natural and continuous sequence, produces 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 the degree of care required of him 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.

In answering this Question, you may consider any loss proven by Secur to have resulted from general or particular requirements and needs of Secur that were a natural, probable, and foreseeable consequence of Norplex's actions and which could not be reasonably prevented.

Do not add any amount for interest on damages, if any. Answer in dollars and cents, or zero.

Answer: \$ _____

QUESTION NO. 22

If you answered "Yes" to Question 11, then answer the following Question. Otherwise do not answer the following Question.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Secur for its damages, if any, that resulted from Norplex's failure to comply with its obligations under Secur's Revised Purchase Order #1017?

In answering this Question, you may consider any loss proven by Secur to have resulted from general or particular requirements and needs of Secur that were a natural, probable, and foreseeable consequence of Norplex's failure to comply and which could not be reasonably prevented.

Do not add any amount for interest on damages, if any. Answer in dollars and cents, or zero.

Answer: \$ _____

QUESTION NO. 23

If you answered "Yes" to Questions 13 or 14, then answer the following Question with respect only to the Question or Questions 13 or 14 to which you answered, "Yes." Otherwise do not answer the following Question.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Secur for its damages, if any, that resulted from such failure to comply with a warranty?

In answering this Question, you may consider any loss proven by Secur to have resulted from general or particular requirements and needs of Secur that were a natural, probable, and foreseeable consequence of Norplex's failure to comply and which could not be reasonably prevented.

Do not add any amount for interest on damages, if any. Answer in dollars and cents, or zero.

Answer: \$ _____

QUESTION NO. 24

If you answered "Yes" to Question 16, then answer the following Question. Otherwise do not answer the following Question.

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

You are instructed that "proximate cause" means that cause which, in a natural and continuous sequence, produces 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 the degree of care required of him 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.

In answering this Question, you may consider any loss proven by Secur to have resulted from general or particular requirements and needs of Secur that were a natural, probable, and foreseeable consequence of Norplex's actions and which could not be reasonably prevented.

Do not add any amount for interest on damages, if any. Answer in dollars and cents, or zero.

Answer: \$ _____

QUESTION NO. 25

If you answered "Yes" to Questions 7, 8, 9 or 16, then answer the following Question with respect to the Question or Questions 7, 8, 9 or 16 to which you answered, "Yes". Otherwise do not answer the following Question.

Do you find by clear and convincing evidence that the harm to Secur resulted from malice?

"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.

"Malice" means a specific intent by Norplex to cause substantial injury or harm to Secur.

Answer "Yes" or "No."

Answer: _____

QUESTION NO. 26

If you answered "Yes" to Question 25, then answer the following Question. Otherwise do not answer the following Question.

What sum of money, if any, if paid now in cash, should be assessed against Norplex and awarded to Secur as exemplary damages, if any, for the conduct found by you in response to Question 25?

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

Factors to consider in awarding exemplary damages, if any, are:

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

Do not add any amount for interest on damages, if any. Answer in dollars and cents, or zero.

Answer: \$ _____

POST-ARGUMENT INSTRUCTIONS

It is your sworn duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to re-examine your own opinion and change your mind if you become convinced that you are wrong. However, do not give up your honest beliefs solely because the others think differently, or merely to finish the case. Remember that in a very real way you are judges—judges of the facts. Your only interest is to seek the truth from the evidence in the case.

When you retire to the jury room to deliberate, you will be given this charge and the exhibits that the Court has admitted into evidence. Then select your Foreperson and conduct your deliberations. If you recess during your deliberations, follow all of the instructions that I have given you concerning your conduct during the trial. After you have reached a unanimous verdict, your Foreperson must fill in your answers to the written questions and sign and date the verdict form. Unless I direct you otherwise, do not reveal your answers until such time as you are discharged. Unless instructed otherwise, you are not to disclose your numerical division on any question.

I want to advise you that although our court reporter has taken down all of the testimony, it is not done in such a way that we can read back or furnish testimony to you at your request. Only when you have a specific disagreement as to a particular witness's testimony on a specific subject can we attempt to obtain that information for you.

If you want to communicate with me or another Judge in my absence at any time, please give a written message to the Court Security Officer, who will bring it to me. The Court will then respond as promptly as possible either in writing or by meeting with you in the courtroom. We

will always first show the attorneys your question and the response before answering your question. After you have reached a verdict, you are not required to talk with anyone about the case unless ordered to do so. You may now retire to the jury room to conduct your deliberations.

DATED: November 17, 2009.



**BARBARA M.G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS**

VERDICT OF THE JURY

We, the jury, have answered the above and foregoing questions as indicated, and herewith return the same into Court as our verdict.

DATED: NOVEMBER 17, 2009.



FOREPERSON