**IN THE COURT OF APPEALS OF IOWA**

No. 2-642 / 12-0035
Filed November 15, 2012

**MIKE OOLMAN,**
Plaintiff-Appellee/Cross-Appellant,

**vs.**

**ICON AG SOLUTIONS, L.L.C.,**
Defendant-Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Sioux County, Jeffrey A. Neary, Judge.

Employer appeals from a jury verdict awarding damages for breach of an employment contract. **AFFIRMED AS MODIFIED.**

Joel D. Vos, James W. Redmond, and Peter J. Leo of Heidman Law Firm, L.L.P., Sioux City, for appellant.

Alex M. Hagen and Brett A. Lovrien of Cadwell, Sanford, Deibert, and Garry, L.L.P., Sioux Falls, South Dakota, and Maureen McGill Hoogeveen, Rock Valley for appellee.

Heard by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

**EISENHAUER C.J.**

Employer Icon Ag Solutions, L.L.C. appeals from a jury verdict awarding damages to employee Mike Oolman for breach of an employment contract. Icon contends insufficient evidence supports the verdict and the court erred in instructing the jury and in excluding deposition testimony. Icon also challenges the court's award of prejudgment interest. We strike the prejudgment interest award and affirm as modified.

**I. Background Facts and Proceedings.**

Because Icon's main complaint is about the sufficiency of the evidence to support the verdict, we set out extensive excerpts from the trial testimony. Greenway Implement, Inc. operated a John Deere dealership in Paullina. Mike Oolman was the sole member of Greenway. Sioux-Lyon Implement Co., an investor-owned company, operated John Deere dealerships in Ireton and Doon. Tom Winter was the general manager of Sioux-Lyon. In 2006, Winter and Oolman sought approval from John Deere to merge Greenway and Sioux-Lyon. Their efforts were successful, and on February 26, 2007, Sioux-Lyon and Greenway signed an operating agreement and contributed their assets to form Icon, a limited liability company. Greenway received thirty-five percent of Icon's units[1] and Sioux-Lyon received sixty-five percent. Oolman and Winter signed identical written employment contracts with a five-year term, ending February 28, 2012. Under the employment contracts Oolman and Winter were co-managers of Icon with Oolman responsible for the aftermarket parts division and Winter

[1] Subsequently, Oolman Partnership, owned by Aaron and Aaric Oolman, received seven percent of Greenway's units leaving Greenway (Mike Oolman) with twenty-eight percent of the Icon membership units.

responsible for the sales division. Modifications to the employment contracts were required to be in writing and signed by both Icon and the employee. It is undisputed neither employment contract was ever modified. Winter testified:

> Q. So at the very beginning when you and [Oolman] put this deal together . . . a term of the deal was that the two of you were going to be co-managers of this business; isn't that right? A. Yes.
>
> . . . .
>
> Q. And you knew it was an important part of [Oolman] agreeing to this deal, right? A. Yes.

In 2008, at the urging of John Deere, Icon acquired two additional locations.[2] Winter testified Sioux-Lyon investor Adam Timmerman[3] "took care of the final negotiations [with the seller] on the purchase agreement." As part of the acquisition process, Icon was required to submit an organizational chart to John Deere. Winter and Oolman agreed to Icon's June 2008 submission of a chart listing Adam Timmerman as general manager. The chart placed Winter and Oolman under Timmerman.[4] It is undisputed Timmerman was *not* an employee of Icon at the time; however, his employment was anticipated. Winter explained:

> Q. And this idea that Adam Timmerman was going to be your [general manager], you knew and you agreed with [Oolman], that was part of the future plan, wasn't it? A. Yeah.
>
> Q. That was never intended on June 2008 to tell John Deere that Adam Timmerman was Icon's general manager, was it? A. No.
>
> . . . .
>
> Q. But you and [Oolman] talked about it would be good to . . . start teaching [Timmerman] the business; isn't that right? A. Yes.
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> . . . .

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[2] The acquired business operates in Lawton and LeMars.

[3] Timmerman invested in Sioux-Lyon in 2005.

[4] The top position of the chart was "Executive Board of Directors, [Tom] Winter, Kevin Kahler, John Greig, Mike Oolman, and Adam Timmerman." Directly underneath was "Adam Timmerman, General Manager." Directly underneath general manager and in parallel positions were "Tom Winter, General Sales Manager" and "Mike Oolman, Aftermarket Manager."

> Q. But you weren't ready to turn your business over to a bright young man with no experience[5] in June of 2008, were you? A. No.
>
> . . . .
>
> Q. And . . . that was a plan that you were going to work towards following through in the next two to three to four years . . .? A. Sure. There was long-range planning in the proposal.

In July 2008, Icon took possession of the new locations, and Timmerman started employment with Icon at an hourly wage. In August, Timmerman moved to Iowa. Timmerman testified:

> Q. . . . And you would agree with me that when [your employment] started, the plan was to have you gradually become involved and kind of gain a day-to-day understanding of the business; is that right? A. Yes.
>
> Q. Because in July 2008 you never worked in a business like Icon, had you? A. Correct.
>
> Q. You never managed a business like Icon, had you? A. No.
>
> . . . .
>
> Q. And that's what the whole plan was . . . when the three of you talked, [Tom Winter and Mike Oolman] were going to help mentor you as you developed in management? A. Yes.

In October 2008, Oolman, Winter, and Timmerman attended a John Deere meeting in Sarasota, Florida. Winter testified: "[W]e decided we needed a little time to . . . get some things figured out on how we're going to proceed and move forward." While in Florida, the three met and agreed to announce to Icon employees that Timmerman was the general manager because "we wanted to put Adam in charge of personnel . . . because both [Oolman] and I felt that Adam had more talent dealing with people." Winter also stated neither he nor Oolman had to recognize Timmerman's authority over them after the Florida meeting:

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[5] Timmerman had a college degree in agricultural business, had played professional football, and had run a farming operation with his brother.

> Q. When you left the meeting in Sarasota, you didn't believe that you were now reporting to Adam [Timmerman] as the GM, did you, Tom? A. No.
>
> . . . .
>
> Q. You were going to announce that [Timmerman] had the title GM, but you were still—and [Oolman] was still—managing the company; isn't that right? A. [It was decided] there was going to be a three-way decision process to manage the company.
>
> Q. Right. So it wasn't that [Timmerman] was elevated over you and . . . [Oolman]. It was, instead, there [are] now three guys working together, fair? A. Yes.

Timmerman testified:

> Q. [In Florida] isn't it true that the three of you together; Mike, Tom, and Adam, decided to increase your involvement and move into kind of a three-headed management configuration? . . . A. That's true.
>
> . . . .
>
> Q. . . . You didn't leave the meeting in Florida thinking you were managing [Winter] as—in his job as sales manager, did you? A. No.
>
> Q. And you didn't . . . think you were managing over [Oolman] in his departments, did you? A. No.
>
> . . . .
>
> Q. Because by October you'd had some limited experience, but you didn't consider yourself, yet the full general manger of the business, did you? A. Correct.

Timmerman testified he started pushing for and exercising more authority to go with his general manager title and this caused problems between him and Oolman. The February 12, 2009 Icon board meeting minutes state: "The board discussed how ICON should be managed—no agreement was made." In early March 2009, Oolman, Timmerman, and Winter sent e-mails to the board discussing Icon's management. Oolman's e-mail stated:

> We have gotten ourselves into an awkward situation. We have created a management structure that is not working. We have a lot of talent and good intentions but not properly aligned. The result is infighting, poor leadership, wasted time, and lack of communication.

> [Winter and I] have the experience and skills to do [our jobs]. Adam [Timmerman] has some good skills and certainly has plenty of ambition, but just hasn't had time and opportunity to gain the needed experience to be a true GM of a large ag dealership.
>
> I think we all agree that the place where we would like to end up as soon as reasonably possible is to have Adam [Timmerman] be the GM of our business. Now the question is, how do we get from here to there? . . .
>
> -I feel the best solution is to have Tom [Winter] and Mike [Oolman] share the GM responsibilities until we feel that [Timmerman] is capable. That was working until Adam got involved. In the meantime there would be several other projects . . . for Adam while he is gaining dealership experience . . . .
>
> Reasons why I feel that Adam [Timmerman] is not qualified to be GM:
>
> Tom, Adam & I all agreed last fall that it would not be fair to Adam or ICON to put him in the position of a true GM. Spader [Business Consulting][6] and JD both recommend 5 years of dealership experience. Yet Adam seems to be assuming that role without direction from the board. We decided to give him that title superficially for the sake of the proposal but not actively.

Winter's March e-mail stated, "[W]e need one GM leading the organization . . . . I don't think we are in agreement on how we should move ahead." Timmerman's e-mail stated: "The move toward true General Management is, in my opinion, the best answer. It was apparent that Tom was willing to accept the tough changes that lie ahead and that Mike did not want to change the way he was managing his portion of the business."

In April 2009, Icon paid Spader Business Consulting $25,000 to meet with Timmerman, Winter, Oolman, and a few board members to discuss how Icon should be managed and an appropriate allocation of management duties. Wendy Oolman, Mike Oolman's wife, worked as an at-will employee and helped

[6] Oolman and Winter had used Spader Business Consulting successfully in the past and held the firm in high regard.

manage Icon's information technology. Winter testified he told Oolman during this time: "I think it's time for Wendy to go." Winter also stated:

> Q. And supposedly the idea after the Spader meeting was that Spader suggested . . . let's try sharing the primary responsibility three ways? A. Well, no, I think what Spader's recommendation was to share it two ways between myself and [Oolman] and bring [Timmerman] on. They had a plan . . . to bring [Timmerman] into the fold . . . . His responsibility—and I don't know—I don't remember exactly what his responsibilities were, but they were very minimal at that point.

Timmerman testified:

> Q. . . . But your impression was [Spader] believed you could play a valuable role, but you weren't ready yet to be the top guy of an organization like this . . . ? A. Yes.
> Q. You didn't really like that result, did you . . . ? A. No, I didn't think it was fair, no.
> Q. And shortly after that is when you fired Wendy Oolman, beginning of June [2009]? A. Yeah, I think the [Spader] meeting was in April.

Timmerman acknowledged the dynamics of Wendy being Mike Oolman's wife "played a role" in her firing. Winter testified Oolman accused him of orchestrating Wendy's firing and their relationship deteriorated:

> Well, our—[Oolman's and my] communication ceased to exist at that point. We're both stubborn individuals. I . . . have to admit that . . . . [T]here was no mending for me at that point in time to—to patch this situation up. It was . . . very clear at that point that we needed one decision maker—one final decision maker in the organization. So at that point I stepped back and I guess relied on Adam [Timmerman] to be that decision maker . . . .

Though communication issues existed, Winter was "not aware of any way in which [Oolman's] performance as manager negatively impacted any financial performance of Icon."

After Timmerman fired Wendy, he called attorney Siegrist "and asked if [he] could fire Mike [Oolman] too." Attorney Siegrist had represented Sioux-Lyon

during the merger of Sioux-Lyon and Greenway. In June/July 2009, Timmerman reviewed Oolman's employment contract "to find out what the reasons were that [he] had to have to fire" Oolman. Timmerman testified:

> Q. You hadn't even been there for one year yet at this point, had you? A. No.
> Q. So you start work in—sometime in July [2008], actually get into Iowa on a day-to-day basis in August [2008] and by June of the very following year [2009], you're ready to fire Mike because you don't think he's cooperating with you enough, right? A. Yes.
> Q. Now, from the lawyer you found out that you had to have a reason under the contract, right? A. Yes.
> Q. You couldn't just fire him like you fired Wendy, fair? A. Yes. Yes.
> Q. So you started collecting reasons, didn't you? A. Yes.
> Q. You built a file on your computer called Mike and you'd store things you thought gave you reasons that you could build up, right? A. Yes.

At a July 16, 2009 special meeting, Mark Olson's motion to remove Winter and Oolman as initial managers of the L.L.C. and to appoint Timmerman as the sole manager under the *operating* agreement passed. Aaric Oolman, Aaron, Oolman, and Mike Oolman voted against the motion (thirty-five percent).

Timmerman testified being the manager of the L.L.C. is different than general manager and noted he had been named "general manager in title" before the July meeting. Winter testified his July removal from the legal structure of the L.L.C. as initial manager did not equate to a removal from his position co-managing the business with Oolman; rather, he and Oolman were still running the company, "Mike's still aftermarket." After the July meeting, however, Winter believed he and Oolman would "essentially answer" to Timmerman.

Oolman testified:

> Q. And there's an operating agreement that sets out who the—essentially the officers of this company are, right? A. Yes.

> Q. Were you and Tom [Winter] originally officers of the company as well as management employees? A. Yes, there [are] two distinct positions.
>
> Q. . . . Exhibit 4 [Notice of July 16 Meeting] talk[s] about changing officers of the company, not management employees? A. Correct.
>
> Q. It does not say that [Timmerman's] going to be appointed as the general manager of this business, does it? A. It does not.
>
> Q. [The notice] does say . . . there is going to be a vote for [Timmerman] being sole manager of the L.L.C., right? A. Correct.
>
> Q. Anybody ever tell you after July 16th that you were no longer co-manager of the company? A. No.
>
> Q. Was your employment agreement ever changed? A. No, it was not.
>
> . . . .
>
> Q. Between July 16th and November [2009], were you still manager of the company? A. Yes.
>
> . . . .
>
> Q. Did you continue as manager after this meeting? A. Yes.
>
> Q. Mike, was this a paperwork decision to put [Timmerman] as the manager under the operating agreement? A. Yes.
>
> Q. It is not what we are talking about with respect to general manager duties, are we? A. That is correct. It is a different position.

Oolman protested his removal as initial manager under the operating agreement. In a September 8, 2009 letter, attorney Siegrist responded:

> Mr. Oolman will not be reinstated as a Co-Manager of the company. Mr. Oolman's former position as Co-Manager under the Operating Agreement is distinctly different from his employment as Co-Manager under the Employment Agreement. Mr. Oolman continues to serve as a Co-Manager of the company pursuant to his Employment Agreement.

Attorney Siegrist then listed Oolman's areas of deficient performance, asserted Oolman breached the employment agreement, and notified Oolman of an upcoming November meeting "for the purpose of determining if [he] is guilty of conduct set forth in [the employment contract] Section 6.A.(*i*) requiring termination of his employment."

Winter testified in June, July, August, and September of 2009, Oolman was indicating in no uncertain terms that he was "not going to answer to Timmerman."

At the November 2, 2009 Icon meeting, Oolman's employment was terminated by motion "for cause, for refusing to abide by company policy and to perform his duties required by his Employment Agreement" and "for cause, for breach of fiduciary duty involving personal gain or profit." The approving votes[7] were made along ownership lines (sixty-five percent in favor/thirty-five percent opposed). At trial, Timmerman acknowledged he was the one pushing for Oolman to be fired and he worked with the attorney to prepare the written motion to be read into the record at the meeting. However, Timmerman did not think it was appropriate for him to read the motion, so he handed out the motion at a meeting held by the Sioux-Lyon investors prior to Icon's November meeting.

In February 2010, Oolman sued Icon and Sioux-Lyon alleging: (1) Icon breached the employment agreement; (2) Icon breached the operating agreement; (3) Icon and Sioux-Lyon engaged in minority oppression; and (4) Sioux-Lyon breached its fiduciary duties to Greenway. Oolman moved for summary judgment, and the defendants resisted and filed a cross-motion for summary judgment.

The court granted summary judgment to Icon on count two, rejecting Oolman's claims Icon breached the operating agreement by (1) removing him as an initial manager without requiring a unanimous vote and (2) decreasing the number of managers without amending the operating agreement. After a lengthy

[7] Winter did not attend the meeting. Mark Olson voted Winter's proxy.

analysis, the court also granted summary judgment to the defendants on Oolman's minority oppression claim.[8] The court dismissed Oolman's breach of fiduciary duty claim, and Sioux-Lyon was dismissed as a defendant.

In October 2011, a three-day jury trial commenced on the issue of Icon's alleged breached of the employment contract. Timmerman testified:

> Q. So you've essentially stepped into the same compensation that Mike was supposed to get under his contract, haven't you? A. Yes, but that wasn't part of the deal when—
>
> Q. . . . But you told . . . the jury, I have no financial incentive . . . . [Y]ou didn't make the change right away, but the first of this year you stepped into the compensation that [Oolman's] contract says he was supposed to get, right? A. Correct.
>
> Q. $100,000 a year salary, right? A. Correct, but you're trying to make it seem like that's the reason I wanted to get rid of Mike and that's definitely is not the reason.
>
> Q. . . . I'm asking you about the fact. The fact is you told [the jury] that you had no financial incentive at all, but you went from an hourly employee making less than $100,000 a year to $100,000 [in salary], plus a compensation bonus based on production that in the past has been as much as $120,000, $130,000; isn't that a fact? A. That's correct.

Whether Icon had fired Oolman for cause under the terms of the employment contract was hotly disputed. The jury concluded Icon breached the employment contract and awarded $518,574.91 to Oolman, the damages he requested. This appeal followed.

**II. Sufficiency of the Evidence.**

Icon argues the district court erred in failing to grant its motion for judgment notwithstanding the verdict because Oolman failed to produce sufficient evidence from which a reasonable person could conclude Icon breached the

[8] Oolman filed a cross-appeal arguing the court erred in summarily dismissing his minority oppression claim. We disagree and adopt the district court's detailed and well-reasoned resolution of this issue.

employment contract. Icon contends the evidence shows "Oolman failed to fulfill the terms of his employment agreement, and was properly terminated based upon Icon's good faith determination that [Oolman] had breached his fiduciary duty to the company and failed to perform the terms of his employment agreement."

Oolman argues the jury "saw through Timmerman's superficial reasons for being unhappy with Oolman and understood that claims of insubordination, failure to perform, and breach of fiduciary duty were a flimsy pretext." Oolman asserts the evidence supported the conclusion it was not his actions, but Timmerman's need to quicken his own ascent, that served as "cause" for his termination. "The Sioux-Lyon faction's desire to gather as much power and control over the company as possible likewise contributed."

Icon's challenge to the "sufficiency of the evidence is reviewed for correction of errors at law." *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 138 (Iowa 1996). "A motion for JNOV should be denied if there is substantial evidence to support each element of the plaintiff's claims." *Id*. In making its ruling, "the district court must view the evidence in the light most favorable to the party against whom the motion is directed." *Id*. In our review, "we view the evidence in the same manner." *Id*. "Evidence is substantial to support a jury verdict if reasonable minds would find it adequate to reach the same conclusion." *Condon Auto Sales & Serv., Inc. v. Crick*, 604 N.W.2d 587, 593 (Iowa 1999).

Whether an employee has been terminated for cause is an issue of fact to be determined by the jury. *Kerndt v. Rolling Hills Nat'l Bank*, 558 N.W.2d 410, 417 (Iowa 1997) (whether employee's alleged actions constituted cause for

termination under an employment agreement is a jury question). Icon asserts a fact-driven argument on appeal. However, the jury, as fact-finder, was free to disbelieve the testimony Icon presented and to credit the testimony of Oolman and the cross-examination of Icon's witnesses. After a review of the extensive record and exhibits generated during the three-day trial, we find substantial evidence to support the jury's verdict.

**III. Motion for New Trial.**

"A ruling on a motion for new trial following a jury verdict is a matter for the trial court's discretion." *Condon*, 604 N.W.2d at 594. The district court "has a broad, but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties." *Id*. On appeal, we are generally "reluctant to interfere with a jury verdict and give considerable deference to a trial court's decision not to grant a new trial." *Id*. We recognize the trial court is in a better position to appraise the situation in the context of the full trial.

**A. Jury Instructions.**

Icon challenges the district court's refusal to give a requested jury instruction "regarding the propriety of the removal of Mike Oolman as a manager of the LLC on July 16, 2009." "Our standard of review for jury instructions is whether prejudicial error by the trial court has occurred." *City of Cedar Falls v. Cedar Falls Cmty. Sch. Dist.*, 617 N.W.2d 11, 20 (Iowa 2000). Icon's proposed instruction stated:

> **Management Decisions.** The Plaintiff has offered evidence that he was removed from his position as co-manager of ICON without the required number of votes from its members. The Plaintiff has also offered evidence that the appointment of his replacement was done without following the proper procedure

> under the company's operating agreement. It has been determined in this case that the Defendant properly removed Plaintiff from his position as co-manager, and that Defendant did not violate its own operating agreement when it appointed Plaintiff's replacement. The validity of these management decisions is not an issue in this case. You must treat their validity as conclusively established when considering Plaintiff's claims in this case.

Icon argues, in the absence of this instruction, "the jury was free to conclude that the July 16, 2009 vote was somehow improper or ineffectual, and to speculate that Adam Timmerman was never properly appointed as manager of the LLC and that Mike Oolman had no responsibility to answer to Adam Timmerman in any way."

Oolman contends the district court correctly ruled the issues raised by the instruction would have confused the jury. Oolman did not offer evidence the July 16, 2009 vote was improper, ineffectual, or lacked a majority and the operating agreement was not offered into evidence. Additionally, Oolman contends the issues resolved in the summary judgment ruling are not probative of whether Oolman was fired with or without cause under the employment contract.

In declining to submit Icon's proposed instruction, the district court stated:

> Okay. I understand what you are asking for. I recognize that there could clearly be some confusion with this jury, but that [operating agreement] is a separate issue and it was separately decided and so I am . . . fearful that if I try to step into the realm of trying to explain the difference between these L.L.C. management agreements, the differing roles that we've heard a lot about here, it is not going to assist this jury. I realize that is a double-edge sword to some extent, but I think it is as clear as it can be at this point in time, that all we are really talking about is whether or not this contract was breached, and I think that is a separate consideration than what I ruled on earlier . . . . I just think that is really asking for trouble. And so your request is denied.

We find no abuse of discretion or prejudicial error. Icon's proposed jury instruction contains concepts foreign to the dispositive legal issue, whether Icon breached the employment contract, and references the operating agreement, a document not in evidence. The court's marshaling instruction on the elements of breach of contract specifically focused the jury on the *employment* agreement: "To prevail on his breach of employment agreement claim, Plaintiff must prove all of the following propositions . . . ."

We also note attorney Siegrist's September 2009 letter recognized differences in the operating agreement and the employment agreement: "Mr. Oolman's former position as Co-Manager under the Operating Agreement is distinctly different from his employment as Co-Manager under the Employment Agreement. Mr. Oolman continues to serve as a Co-Manager of the company pursuant to his Employment Agreement." On cross-examination, Oolman likewise specifically recognized differences in the operating agreement and the employment agreement. Oolman's testimony did not raise issues with the "number of votes" or the "proper procedure" under the operating agreement. Rather:

> Q. And the board had the right legally to appoint [Timmerman] general manager of Icon? A. Manager of the L.L.C. They had the right to do that, I understand.
>
> Q. And they had the right to tell you, Mike Oolman, to report to Adam Timmerman? A. They did not have a right to change my job description that was in place at the time that my employment agreement was signed and agreed to.
>
> Q. And so what you are saying is you did not have to obey that direction from Icon? A. I did not have to accept a new job description is what I am saying without my written approval.

We conclude Icon's proposed instruction was directed at a legal theory, Icon's breach of the operating agreement, the jury was never asked to decide. "Instructions that are not related to the factual issues to be decided by the jury should not be submitted . . . ." *City of Cedar Falls*, 617 N.W.2d at 20. We affirm the district court's denial of a new trial on this issue.

**B. Exhibit Q.**

At the start of Icon's case-in-chief, it asked to read to the jury a portion of Oolman's deposition testimony. Oolman objected. The district court offered to allow Icon to recall Oolman to testify in lieu of reading his deposition testimony. Icon chose not to recall Oolman, but to present Exhibit Q, the deposition pages, as an offer of proof. On appeal, Icon argues it is entitled to a new trial because the district court did not allow it to read portions of Oolman's deposition into evidence. Icon contends Exhibit Q was important impeachment of Oolman's trial testimony concerning (1) Oolman's lack of communication in hiring employees without notice to Timmerman, and (2) Oolman's breach of fiduciary duty to Icon by his participation in Wendy's visit to a lawyer about her termination.

Erroneous rulings as to the admissibility of evidence may support the granting of a new trial. *White v. Walstrom*, 448 N.W.2d 578, 581 (Iowa 1962). The district court's evidentiary rulings are reviewed for an abuse of discretion. *Kurth v. Iowa Dep't of Transp*., 628 N.W.2d 1, 5 (Iowa 2001). "An abuse of discretion occurs when the trial court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable." *Id*. "We grant the district court wide latitude regarding admissibility and will reverse only where the losing party was prejudiced by an unreasonable decision." *Id.*

Iowa Rules of Civil Procedure 1.704(2) supports Icon's request to put Oolman's deposition in evidence as long as the deposition is admissible and relevant. *See Walstrom*, 448 N.W.2d at 581. Assuming, without deciding, the court erred in excluding the evidence, our review of the record does not show Icon was "prejudiced by an unreasonable decision." At trial, Timmerman could not name any specific employee hired after he told Oolman that pre-approval was required. Timmerman also admitted he did not know whether Oolman or someone in Oolman's department had made the allegedly improper hiring decisions. Therefore, Timmerman's testimony could not substantiate a hiring without pre-approval as basis for "cause." Regarding Wendy's visit to the lawyer after her firing, Oolman's deposition testimony about the consultation is generally consistent with his trial testimony. Any discrepancy is confined to minor details unlikely to have materially affected the jury's deliberations. In sum, Icon was not prejudiced by the court's evidentiary ruling.

Additionally, we afford considerable deference to a trial court's decision not to grant a new trial. *See Condon*, 604 N.W.2d at 594. We affirm the district court's denial of a new trial on this issue.

**IV. Prejudgment Interest.**

Icon appeals the district court's award of prejudgment interest. We review for correction of errors at law. *Gosch v. Juelfs*, 701 N.W.2d 90, 91 (Iowa 2005).

The jury returned a general verdict form containing a single line for the damages award.[9] No interrogatories were submitted to the jury. *See* Iowa R. Civ. P. 1.934. After the verdict, the court asked the parties to submit briefs on the issue of interest. Icon argued the court should award interest only from the date of judgment. Oolman argued: "Here, a *jury could have returned a verdict that segregated* past damages from future damages. The uncontroverted evidence makes clear that $328,485.75 of the jury award was for past damages, and $190,089.16 of the jury award was for future damages." (Emphasis added.) Next, Oolman detailed and listed his alleged past damages by year: 2009 ($40,783.22); 2010 ($210,029.56); and nine months of 2011 ($77,672.97).

Without explaining its calculation, the district court awarded prejudgment interest on $426,246.41 as "past damages from . . . Oolman's termination from employment on November 2, 2009 to and including the date of the verdict on October 6, 2011."

In resolving this issue we recognize,

> Generally, interest runs from the time money becomes due and payable, and in the case of unliquidated claims this is the date they become liquidated, ordinarily the date of the judgment. . . . One exception to this rule is recognized in cases in which the entire damage for which recovery is demanded was complete at a definite time before the action was begun.

*Schimmelpfenning v. Eagle Nat'l Assur. Corp.*, 641 N.W.2d 814, 816 (Iowa 2002) (internal quotation marks and citation omitted) (awarding prefiling interest on some but not all elements of damage); *see Chard v. Iowa Mach. & Supply Co.*,

[9] The jury verdict stated: "We, the Jury, find in favor of the Plaintiff Mike Oolman and fix the amount of his recovery against the Defendant Icon Ag Solutions, LLC at $518,574.91 dollars."

446 N.W.2d 81, 84 (Iowa Ct. App. 1989) (computing interest on employment contract's liquidated damages clause from date of employee's termination).

Under the exception, when "a definite amount of recovery has been fixed *by the trier of fact for a damage item* shown to be complete at a particular time, interest should be allowed as to that item from the time the damage was shown to be complete." *Gosch*, 701 N.W.2d at 91-92 (emphasis added). However, "when a general verdict is returned that includes unliquidated damages complete at a certain time and also unliquidated damages that were not shown to have been complete at a certain time, it is impossible to determine a portion of the verdict on which prefiling interest may be recovered." *Id*. at 92; *see Abel v. Dodge*, 152 N.W.2d 823, 829 (Iowa 1967). Even if we disregard the "complexities of piecemeal computation," such a division of damages "would require separate awards on the various damage elements to be fixed by the jury." *Gosch*, 701 N.W.2d at 92.

Therefore, we agree with Icon that although *testimony* may have been given that would have allowed the classification of the categories of damages awarded into past damages and future damages, such *testimony* does not change the fact the jury, as fact-finder, did not make "separate awards on the various damage elements." We modify the district court's December 8, 2011 "corrected amended and supplemented judgment on jury verdict" to strike paragraph 1, prejudgment interest.

Costs on appeal are taxed one-half to each party.

**AFFIRMED AS MODIFIED.**