

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION**

SHINTECH INCORPORATED,	§	
	§	
<i>Plaintiff,</i>	§	
	§	Civil Action No. 3:23-cv-112
v.	§	
	§	
OLIN CORPORATION and BLUE	§	JURY TRIAL DEMANDED
CUBE OPERATIONS LLC,	§	
	§	
<i>Defendants.</i>	§	

**CHARGE OF THE COURT**

**MEMBERS OF THE JURY:**

It is my duty and responsibility to instruct you on the law you are to apply in this case. The law contained in these instructions is the only law you may follow. It is your duty to follow what I instruct you the law is, regardless of any opinion that you might have as to what the law ought to be.

If I have given you the impression during the trial that I favor either party, you must disregard that impression. If I have given you the impression during the trial that I have an opinion about the facts of this case, you must disregard that impression. You are the sole judges of the facts of this case. Other than my instructions to you on the law, you should disregard anything I may have said or done during the trial in arriving at your verdict.

You should consider all of the instructions about the law as a whole and regard each instruction in light of the others, without isolating a particular statement or paragraph.

The testimony of the witnesses and other exhibits introduced by the parties constitute the evidence. The statements of counsel are not evidence; they are only arguments. It is important for you to distinguish between the arguments of counsel and the evidence on which those arguments rest. What the lawyers say or do is not evidence. You may, however, consider their arguments in light of the evidence that has been admitted and determine

whether the evidence admitted in this trial supports the arguments. You must determine the facts from all the testimony that you have heard and the other evidence submitted. You are the judges of the facts, but in finding those facts, you must apply the law as I instruct you.

You are required by law to decide the case in a fair, impartial, and unbiased manner, based entirely on the law and on the evidence presented to you in the courtroom. You may not be influenced by passion, prejudice, or sympathy you might have for the plaintiff or the defendants in arriving at your verdict.

### **Burden of Proof**

Plaintiff Shintech Incorporated has the burden of proving its case by a preponderance of the evidence.

Blue Cube Operations LLC has the burden of proving that the terms of the Contract's Force Majeure clause excuses its performance.

To establish by a preponderance of the evidence means to prove something is more likely so than not so. If you find that Plaintiff Shintech Incorporated has failed to prove any element of its claim by a preponderance of the evidence, then it may not recover on that claim.

### **Evidence**

The evidence you are to consider consists of the testimony of the witnesses, the documents and other exhibits admitted into evidence, and any fair inferences and reasonable conclusions you can draw from the facts and circumstances that have been proven.

Generally speaking, there are two types of evidence. One is direct evidence, such as testimony of an eyewitness. The other is indirect or circumstantial evidence. Circumstantial evidence is evidence that proves a fact from which you can logically conclude another fact exists. As a general rule, the law makes no distinction between direct and circumstantial evidence but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

## Witnesses

You alone are to determine the questions of credibility or truthfulness of the witnesses. In weighing the testimony of the witnesses, you may consider the witness's manner and demeanor on the witness stand, any feelings or interest in the case, or any prejudice or bias about the case, that he or she may have, and the consistency or inconsistency of his or her testimony considered in the light of the circumstances. Has the witness been contradicted by other credible evidence? Has he or she made statements at other times and places contrary to those made here on the witness stand? You must give the testimony of each witness the credibility that you think it deserves.

Even though a witness may be a party to the action and therefore interested in its outcome, the testimony may be accepted if it is not contradicted by direct evidence or by any inference that may be drawn from the evidence, if you believe the testimony.

You are not to decide this case by counting the number of witnesses who have testified on the opposing sides. Witness testimony is weighed; witnesses are not counted. The test is not the relative number of witnesses, but the relative convincing force of the evidence. The testimony of a single witness is sufficient to prove any fact, even if a greater number of witnesses testified to the contrary, if after considering all of the other evidence, you believe that witness.

In determining the weight to give to the testimony of a witness, consider whether there was evidence that at some other time the witness said or did something, or failed to say or do something, that was different from the testimony given at the trial.

A simple mistake by a witness does not necessarily mean that the witness did not tell the truth as he or she remembers it. People may forget some things or remember other things inaccurately. If a witness made a misstatement, consider whether that misstatement was an intentional falsehood or simply an innocent mistake. The significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field is

permitted to state his or her opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely on it.

### **No Inference from Filing Suit**

The fact that a person brought a lawsuit and is in court seeking damages creates no inference that the person is entitled to a judgment. Anyone may make a claim and file a lawsuit. The act of making a claim in a lawsuit, by itself, does not in any way tend to establish that claim and is not evidence.

### **Limiting Instruction**

When testimony or an exhibit is admitted for a limited purpose, you may consider that testimony or exhibit only for the specific limited purpose for which it was admitted.

### **Bias**

Do not let the order in which these questions are asked influence whether one question is more important than the other. The plaintiff's questions are typically asked first just as a matter of protocol.

## Definitions

“**Shintech**” means Plaintiff Shintech Incorporated.

“**Blue Cube**” means Defendant Blue Cube Operations LLC.

“**Olin**” means Defendant Olin Corporation.

“**Defendants**” means Blue Cube and Olin.

“**PVC**” means grades of polyvinyl chloride resin.

“**VCM**” means Vinyl Chloride Monomer.

“**Contract**” means the VCM Sales Contract found in Plaintiff’s Exhibit 1, as modified for 2023.

“**The 2023 Major Turnaround completion date**” is May 2, 2023.

## Instructions

Ladies and Gentlemen:

At the start of this case, I advised that I might give you an instruction that some evidence has been received for a limited purpose and that you must follow my instruction to disregard it for other purposes. I am giving you such an instruction now.

You have heard evidence about general turnaround practices in the chemical industry, the frequency of turnaround schedule extensions at other chemical plants, and how Shintech handled prior turnarounds under different contracts or with different companies.

I am instructing you that you may not consider any evidence about how long other turnarounds lasted as evidence of whether Defendants failed to comply with or are excused from the turnaround timetables to which these parties agreed. You must decide whether Defendants failed to comply with or are excused from their obligations by reference to the terms of the Contract.

The parties agreed in the Contract that not all sales of PVC would be included in the PVC Net Back formula for calculating the price of VCM.

In addition to the language of the Contract, the law imposes on Defendants a duty to perform in good faith. In that connection, good faith means honesty in fact and the observance of reasonable commercial standards of fair dealing. The alleged breach of good faith must be tied to a specific contractual duty. Shintech need not prove the Defendants breached the duty to perform in good faith to prove breach of the Contract.

In answering questions about damages, answer each question separately. Unless instructed otherwise, 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.

**Question 1**

**Did Blue Cube fail to comply with the Contract by:**

- a. failing to supply VCM after the expiration of the 2023 Major Turnaround completion date?

Answer "Yes" or "No."

**Answer:** Yes

- b. failing to reimburse Shintech the prorated portion of the Capacity Reservation Fee Shintech paid in 2023 to reserve VCM that Blue Cube failed to supply?

Answer "Yes" or "No."

**Answer:** Yes

For each part of Question 1 to which you answered "Yes," answer the corresponding part of the following question. Otherwise, do not answer the following question.

### Question 2

**What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Shintech for its damages, if any, that resulted from the failure(s) to comply found in Question 1?**

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 or another question about damages, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any.

Answer in dollars and cents for damages, if any.

- a. The profits Shintech lost under the Contract as a direct consequence of Blue Cube's failure to supply VCM after the expiration of the 2023 Major Turnaround completion date.

**Answer:** \$ 34,077,119.00

- b. The prorated portion of the Capacity Reservation Fee Shintech paid in 2023 to reserve VCM that Blue Cube failed to supply.

**Answer:** \$ 5,465,080.00

If you answered “Yes” to Question 1(a), answer the following question. Otherwise, do not answer the following question.

### Question 3

Did Blue Cube prove that its failure to comply with the obligation to supply VCM you found in Question 1(a) is excused under the terms of the Contract’s Force Majeure clause for the time period of May 24, 2023, to July 31, 2023?

The Contract’s Force Majeure clause reads as follows:

#### 5. FORCE MAJEURE

Performance is excused when (such instance, a “Force Majeure Event”): (a) there is any contingency beyond the reasonable control of Seller or Customer including, for example, war or hostilities, acts of God, accident, fire, explosion, public protest, breakage of equipment, pandemic, acts of terrorism, activity of a governmental authority (including, for example, the passage of legislation), or labor difficulties which interferes with Seller’s or Customer’s production, supply, transportation, disposal or consumption practice and which, despite the exercise of due diligence, materially interferes with the production at the time at any of the facilities owned by Seller or Customer that produce chlorine, EDC, VCM or PVC covered by this Contract; or (b) Seller is unable to perform under this Contract as a result of a third party’s (including The Dow Chemical Company’s or its assignee’s) failure to provide materials or services that are required to produce the Product at Seller’s Freeport, Texas facilities due to force majeure declared by such third party. For the sake of clarity, Seller’s inability to negotiate a contract with a third party (including The Dow Chemical Company or its assignee) or an amendment or renewal of an existing contract with a third party (including The Dow Chemical Company or its assignee), shall not be deemed to be a Force Majeure Event. Upon the occurrence of such Force Majeure Event the purchase and supply obligations of the Parties shall be adjusted such that quantities so affected shall be eliminated from this Contract without liability to either Party, but this Contract shall otherwise remain unaffected. Seller may, during any period of shortage of such ethylene, chlorine, EDC or raw materials due to a Force Majeure Event, allocate its supply of ethylene, chlorine, EDC or other raw material among the various uses thereof in any manner which is fair and reasonable. During any period of shortage of VCM, Seller shall give priority to Customer in any allocation. Seller shall have no obligation to obtain ethylene, chlorine, EDC, VCM, or other raw material from a third party in order to supply Seller’s excused contractual shortfall. Both Seller and Customer expressly acknowledge the obligation to exercise good faith in the invocation of the relief granted by this clause.

Answer “Yes” or “No.”

Answer:     No

If you answered "Yes" to Question 3, answer the following question. Otherwise, do not answer the following question.

**Question 4**

What sum of money, if any, is Blue Cube not required to pay as a result of the excuse you found applied in Question 3?

Answer in dollars and cents for damages, if any.

**Answer:** \$ \_\_\_\_\_

### Question 5

**Do Defendants hold money that in equity and good conscience belongs to Shintech?**

In determining whether Defendants hold money that belongs to Shintech in “equity and good conscience,” you should consider the following:

- (1) whether Defendants obtained the funds through fraud, duress, or undue advantage,
- (2) whether the payment was not made voluntarily with full knowledge of facts, and
- (3) whether overall fairness and abstract justice support return of the funds to Shintech.

Answer “Yes” or “No.”

Answer: Yes

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

**Question 6**

**What sum of money, if any, do Defendants hold that belongs to Shintech in equity and good conscience?**

You shall not award any sum of money if you have otherwise, under another question about damages, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any.

Answer in dollars and cents for damages, if any.

**Answer:** \$ 18,000,000.00

It is now your duty to deliberate and to consult with one another in an effort to reach a verdict. Each of you must decide the case for himself or herself, but you should do so only after a consideration of the case with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if you are convinced that you were wrong. But do not give up on your honest beliefs because the other jurors think differently, or just to finish the case.

Remember at all times: you are the judges of the facts. You have been allowed to take notes during this trial. Any notes that you took during this trial are only aids to memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you did not take notes, rely on your independent recollection of the evidence and do not be unduly influenced by the notes of other jurors. Notes are not entitled to greater weight than the recollection or impression of each juror about the testimony.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, or computer to do any investigation or to communicate about this case. You may not use the internet, or any internet service, or any text- or instant-messaging service, nor use in any way any internet chat room, blog, or website such as Facebook, Snapchat, Reddit, LinkedIn, YouTube, Instagram, TikTok, or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations. You must inform me immediately if you become aware of another juror's violation of these instructions.


You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during

deliberations because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or the parties in the case. This would unfairly and adversely affect the judicial process.

When you go into the jury room to deliberate, you may take with you a copy of this charge, the exhibits that I have admitted into evidence, and your notes. You must select a presiding juror to guide you in your deliberations and to speak for you here in the courtroom. Your verdict must be unanimous. After you have reached a unanimous verdict, your presiding juror must fill out the answers to the written questions on the verdict form and sign and date it. After you have concluded your service and I have discharged the jury, you are free, but not required, to talk with anyone about the case. If you need to communicate with me during your deliberations, the presiding juror should write the inquiry and give it to the court security officer. After consulting with the attorneys, I will respond either in writing or by meeting with you in the courtroom. Keep in mind, however, that you must never disclose to anyone, not even to me, your numerical division on any question.

When you have answered all the questions you are required to answer under the instructions contained in this charge and your presiding juror has placed your answers in the spaces provided and signed the verdict certificate, you will inform the court security officer at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.


Signed on Galveston Island on this 9th day of February, 2026.

  
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JEFFREY VINCENT BROWN  
UNITED STATES DISTRICT JUDGE

## VERDICT CERTIFICATE

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

Signed on Galveston Island on this 10 day of February, 2026.

  
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Presiding Juror