

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

FILED
DAVENPORT, IOWA
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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

RANDY YORK, CLAIRE YORK,
and MARY YORK,

Plaintiffs,

vs.

AMANA COMPANY, L.P., INC.,
f/k/a RAYTHEON APPLIANCES,
INC. and AMANA REFRIGERATION,
and MAYTAG CORPORATION,

Defendants.

Civil No. 3:00-cv-30016

INSTRUCTIONS TO THE JURY

MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE
FOLLOWING INSTRUCTIONS:

This case involves a fire that occurred at property located at 3318 Park Avenue W, Muscatine, Muscatine County, Iowa. This property was owned by Claire and Mary York and leased to their son, Randy York, for use as a veterinarian clinic known as "Companion Care Animal Hospital." On or about April 20, 1997 there was a fire at this location.

Plaintiffs Randy, Claire and Mary York have sued Amana Company, L.P., which manufactured a refrigerator that was present in the veterinarian clinic at the time of the fire. Plaintiffs allege that the refrigerator was defective at the time it was purchased by Randy York, and that this alleged defect in the refrigerator caused the fire. They assert Amana was at fault and that they sustained property damage as a result. Amana denies these allegations. Amana denies that the refrigerator was defective,

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denies that the refrigerator caused the fire in question, and denies that any fault on its part caused any damage to plaintiffs.

In these instructions when I refer to Amana I mean defendants Amana Company L.P., Raytheon Appliances, Inc., Amana Refrigeration, Inc. and Maytag Corporation.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of the trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed. In considering the instructions, you will attach no importance or significance whatever to the order in which they are given.

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

You must follow the instructions now given you regardless of your opinion of what the law ought to be. You need not be concerned with the wisdom of any rule of law.

Finally, as judges of the facts your duty is to decide all fact questions. In doing so, do not be influenced by any personal likes or dislikes, sympathy, bias, prejudice or emotions.

INSTRUCTION NO. 2

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition;
2. Exhibits received by the Court.
3. Stipulations which are agreements between the parties. If the parties stipulate to a fact, you should treat that fact as having been proved.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only exhibits formally offered and received by the court are available to you during your deliberations and you will be provided with these. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence.

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 3

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence, but if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witness' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witness' appearance, conduct, age, intelligence, memory, and knowledge of the facts;
3. The witness' interest in the trial, their motive, candor, bias, and prejudice; and
4. Whether the witness said something different at an earlier time.

INSTRUCTION NO. 4

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 5

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

INSTRUCTION NO. 6

In these instructions you are told that your verdict depends on whether you find certain facts have been proved.

The burden of proving a fact is upon the party whose claim depends upon that fact. The party who has the burden of proving a fact must prove it by the greater weight or preponderance of the evidence. To prove something by the greater weight or preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If on any issue in the case the evidence is equally balanced, you cannot find that issue has been proved.

The greater weight or preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

INSTRUCTION NO. 7

In this case the plaintiffs Randy, Claire and Mary York are individuals and defendants are corporations. Each party has equal rights in court. This case should be determined by you with the same fairness and consideration as though it were a case between individuals, and no inference or presumption is to be drawn against the corporations that would be improper in a case between individuals. In addition, this case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons stand equal before the law, and are to be dealt with as equals in a court of law.

INSTRUCTION NO. 8

You have seen a videotape of a burn test. The burn test does not attempt to simulate the fire as it occurred in the plaintiffs' building and you will take care not to consider it for that purpose. You may consider the videotape and the testimony concerning the burn test only for the purpose of assessing the expert testimony about an origin of the fire inside the refrigerator.

INSTRUCTION NO. 9

You have heard reference to insurance for the fire damages in this case. Under the law the fact or amount of insurance for a property loss is not relevant to the issues of fault and damages submitted to you in these instructions and accordingly, you shall not give insurance any consideration in determining the issues in this case.

INSTRUCTION NO. 10

In these instructions, I will be using the term "fault." Fault means one or more acts or omissions towards the person of another which constitutes negligence or subjects a party to strict tort liability.

INSTRUCTION NO. 11

Plaintiffs' first claim is a claim of strict liability. In order to prove that Amana was at fault under this claim, plaintiffs must prove all of the following propositions by the preponderance of the evidence:

1. Amana manufactured the refrigerator in question;
2. Amana was engaged in the business of manufacturing refrigerators;
3. The refrigerator was in a defective condition at the time it left Amana's control in that the defrost heating system contained a defect which allowed a short to the sheath creating a fire hazard.
4. The defective condition was unreasonably dangerous to the plaintiffs.
5. Plaintiff Randy York used the product in the intended manner or in a manner reasonably foreseeable by Amana.
6. The refrigerator was expected to and did reach the plaintiffs without substantial change in its condition.
7. The defect was a proximate cause of plaintiffs' damage.
8. The amount of damage.

If the plaintiffs have failed to prove any of these propositions, the plaintiffs are not entitled to damages. If the plaintiffs have proved all of these propositions, you will consider the defense of state of the art as explained in Instruction No.

INSTRUCTION NO. 12

A product is defective if it does not perform reasonably, adequately and safely when it is used in a manner reasonably foreseeable by the defendants. A reasonably foreseeable use may include misuse by plaintiffs if such misuse is reasonably foreseeable by the defendants. In determining a reasonably foreseeable use you should consider the following matters as shown by the evidence:

- a. The reasonable use or uses of the product.
- b. The ordinary user's awareness that the use of the product in a certain way is dangerous.
- c. The likelihood of, and probable use of, the product by persons of limited knowledge.
- d. The normal environment for the use of the product and the foreseeable risks in such a place.
- e. Any other evidence bearing on this question.

INSTRUCTION NO. 13

A defective product is unreasonably dangerous if the danger is greater than an ordinary consumer with knowledge of the product's characteristics would expect it to be.

INSTRUCTION NO. 14

A defect in a product is a proximate cause of damage when it is a substantial factor in producing damage, and when the damage would not have happened except for the defect.

"Substantial" means the defect has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

INSTRUCTION NO. 15

Plaintiffs' second claim is a claim of negligence. In order to prove that Amana was at fault under this claim, plaintiffs must prove all of the following propositions by a preponderance of the evidence:

1. Amana was negligent;
2. Amana's negligence was a proximate cause of damage to the plaintiffs;
3. The amount of damage.

If the plaintiffs have failed to prove any of these propositions, plaintiffs are not entitled to damages. If plaintiffs have proved all of these propositions, you will consider the defense of state of the art as explained in Instruction No.

INSTRUCTION NO. 16

"Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. Negligence is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

Plaintiffs' claim of negligence is under what is called the general rule of negligence. Under this rule, the occurrence of damages allows you to conclude that Amana was negligent if the plaintiffs prove (1) the damages were caused by a refrigerator under the exclusive control of the defendants and (2) the damages would not have occurred if ordinary care had been used.

The plaintiffs must prove defendants had exclusive control when the negligence occurred. If you find the negligence occurred before the damages, then the plaintiffs must prove there was no change in the condition of the refrigerator after it left Amana's exclusive control which could reasonably have caused the damages.

The plaintiffs must also prove the occurrence would not have happened if ordinary care had been used. Proof of this requirement rests on common experience.

If you find the plaintiffs have proved both requirements of the rule, you may conclude the defendants were negligent, but you are not required to do so. If the plaintiffs fail to prove either of these requirements, the plaintiff cannot recover damages under the general negligence claim.

INSTRUCTION NO. 17

The negligence of a party is a proximate cause of damage when it is a substantial factor in producing damage, and when the damage would not have happened except for the conduct.

"Substantial" means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

INSTRUCTION NO. 18

Even if the plaintiffs have established that the defrost heater of the refrigerator at issue was defective, you must still consider whether the product conformed to the state of the art.

"State of the art" is what feasibly could have been done. It means what technologically and practically could have been done at the time, based on the latest scientific knowledge and discoveries in the field, to design and manufacture a refrigerator that would have prevented plaintiffs' damages while meeting the user's needs. Custom in the industry is not necessarily state of the art, nor is every alternative design for which technology exists necessarily feasible.

To establish this defense, Amana must prove its product conformed to the state of the art in existence at the time the product was designed and manufactured with respect to the specific claims that plaintiffs have made.

If Amana proves its product conformed to the state of the art with respect to plaintiffs' specific claims, then Amana is not at fault and you should answer the appropriate interrogatory accordingly.

If Amana fails to prove its product conformed to the state of the art, you will consider whether plaintiffs are entitled to recover under the other instructions.

INSTRUCTION NO. 19

If you find in favor of plaintiffs under Instruction Nos. 110-15 and if you answer "no" in response to Instruction No. 18, then you must award plaintiffs such sum as you find by the preponderance of the evidence will fairly and justly compensate plaintiffs for any damages you find plaintiffs sustained as a direct result of Amana's fault. Plaintiffs' claims for damages are separated out between Randy York and Claire and Mary York. You must consider them separately and answer the special verdict form questions separately with respect to the plaintiffs.

You shall consider the following items:

With respect to Randy York:

1. The difference between the reasonable market value of Randy York's personal property and property used in his veterinary practice immediately before and after the fire.

With respect to Claire York and Mary York:

1. The difference between the reasonable market value of the building and improvements to the property immediately before and after the fire.
2. The reasonable cost of demolition, clean-up and hauling away debris.
3. Lost rent.

In considering damages you must use your sound judgment based upon impartial consideration of the evidence. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice for or against any party.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

The amount you assess for any item of damage must not exceed the amount caused by Amana as proved by the evidence.

INSTRUCTION NO. 20

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

INSTRUCTION NO. 21

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members foreperson of the jury. The person so elected is responsible for the orderly, proper and free discussion of the issues by any juror who wishes to express his or her views. The foreperson will supervise the balloting and sign the interrogatories that are in accord with your decision and will also sign any written inquiries addressed to the Court.

Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion in a case or determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved, and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans or advocates. You are judges--judges of the facts. Your sole interest is to ascertain the truth.

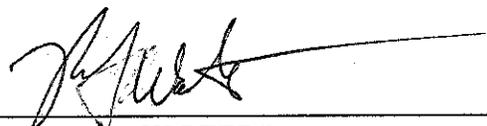
INSTRUCTION NO. 22

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Submitted to you with these instructions is the special verdict form. After you have agreed and appropriately signed the verdict form in accordance with the directions contained therein, inform the jury officer outside the room. You will have the verdict signed only by one of your number whom you will have selected as your foreperson and return with it into court.

Dated this 29th day of November, 2001.



ROSS A. WALTERS
CHIEF UNITED STATES MAGISTRATE JUDGE