

**INSTRUCTION NO. 24 – ADVANCE BRANDS’S CLAIM:
FAILURE TO WARN**

In order to recover on a claim that Alkar’s product was defective because of inadequate instructions or warnings, Advance Brands must prove all of the following propositions:

1. Alkar sold or distributed the oven;
2. Alkar was engaged in the business of selling or distributing the oven;
3. The foreseeable risks of harm posed by the oven could have been reduced or avoided by the provision of reasonable instructions or warnings, in one or more of the following ways:
 - a. Instructing or warning regarding the dangers of, or potential for, over-pressurization;
 - b. Instructing or warning regarding the dangers of use of the oven with one zone isolated;
 - c. Instructing or warning regarding the dangers of use of the oven when one zone does not come up to temperature; and/or
 - d. Instructing or warning regarding the dangers of trapping thermal fluid in one zone of the oven.
4. The omission of the instructions or warnings renders the oven not reasonably safe;

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INSTRUCTION NO. 24 (Cont'd)

5. The risk to be addressed by the instructions or warnings was not obvious to, or generally known by, foreseeable product users;
6. The omission of the instructions or warnings caused Advance Brands's damages; and
7. The amount of damages.

If Advance Brands has failed to prove any of these propositions, it is not entitled to damages on this claim. If Advance Brands has proven all of these propositions, then you will consider the defense of comparative fault, as explained in Instruction Nos. 14 through 20.

**INSTRUCTION NO. 25 – DEFINITION:
IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**

Where at the time of contracting, the seller has reason to know the particular purpose for which the oven is required and the buyer is relying on the seller's skill or judgment to select or furnish a suitable oven, there is an implied warranty the goods shall be fit for the particular purpose.

**INSTRUCTION NO. 26 – ADVANCE BRANDS’S CLAIM:
IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**

In order to recover on a claim that Alkar breached an implied warranty of fitness for a particular purpose, Advance Brands must prove all of the following propositions:

1. At the time of the sale Alkar had reason to know the particular purpose for which Advance Brands required the oven;
2. Alkar had reason to know Advance Brands was relying on Alkar’s skill or judgment to furnish the oven;
3. Advance Brands relied upon Alkar’s skill or judgment;
4. The oven was not fit for the particular purpose;
5. The failure of the oven to fit the particular purpose was a cause of Advance Brands’s damages; and
6. The amount of damages.

If Advance Brands has failed to prove any of these propositions, Advance Brands is not entitled to damages on this claim. If Advance Brands has proven all of these propositions, you will consider the defense of comparative fault as explained in Instruction Nos. 14 through 20.

INSTRUCTION NO. 27 - FITNESS FOR PARTICULAR PURPOSE

When the ordinary purpose of a product is the same as the buyer's particular purpose, the buyer must still prove the seller knew the buyer's particular purpose and the buyer was relying on the seller's skill and judgment to furnish a suitable product or service.

No specific conversation between the parties is necessary with respect to the particular purpose. The particular purpose may arise from the facts and circumstances surrounding the transaction or past transactions between the parties.

INSTRUCTION NO. 28 – RELIANCE: PARTICULAR PURPOSE

It is not enough that the buyer relied upon the general reputation or integrity of the seller. It must appear the seller had special skill or judgment regarding the product and its intended use, and the buyer relied on the seller's special skills or judgment.

The buyer's reliance on the seller's skill or judgment need not be a total reliance. The buyer may rely partly on their own judgment and partly on the seller's skill and judgment.

**INSTRUCTION NO. 29 – DEFINITION:
IMPLIED WARRANTY OF MERCHANTABILITY**

When the seller is a merchant and a contract for the sale of goods exists between the buyer and the seller, there is an implied warranty that the goods shall be merchantable. A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty.

**INSTRUCTION NO. 30 – ADVANCE BRANDS’S CLAIM:
IMPLIED WARRANTY OF MERCHANTABILITY**

In order to recover on a claim that Alkar breached an implied warranty of merchantability, Advance Brands must prove all of the following propositions:

1. Alkar was a merchant as defined in Instruction No. 31, at the time it sold the oven;
2. The oven was not merchantable as defined in Instruction No. 32;
3. The lack of merchantability was a cause of Advance Brands’s damages; and
4. The amount of damages.

If Advance Brands has failed to prove any of these propositions, it is not entitled to damages on this claim. If Advance Brands has proven all of these propositions, you will consider the defense of comparative fault as explained in Instruction Nos. 14 through 20.

INSTRUCTION NO. 31 – DEFINITION: MERCHANT

Merchants are persons who deal in products or services of the kind in question. The term merchant does not include a casual or inexperienced seller.

INSTRUCTION NO. 32 - DEFINITION: MERCHANTABILITY

Merchantability means that the goods must be at least such as pass without objection in the trade under the contract description and are fit for the ordinary purposes for which such goods are used.

INSTRUCTION NO. 33 – DEFINITION: NEGLIGENCE

“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.

INSTRUCTION NO. 34 – DEFINITION: CAUSE

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct. There can be more than one cause of an injury or damage. When the fault of two or more separate parties is so related to an event that their combined fault, when viewed as a whole, is the cause of the event without which the event would not occur, then the fault of each party may be a cause.

INSTRUCTION NO. 35 - ACCIDENT

The mere fact an accident occurred does not mean a party was at fault.

**INSTRUCTION NO. 36 – ALKAR’S CLAIM:
ADVANCE BRANDS’S NEGLIGENCE**

Alkar claims Advance Brands was negligent. To prove Advance Brands was negligent, Alkar must prove all of the following propositions:

1. Advance Brands was negligent in one or more of the following ways:
 - a. Failing to properly employ lockout/tagout procedures;
 - b. Failing to employ reasonable care in using the oven; and/or
 - c. Failing to follow the warnings supplied in the manual;
2. The negligence caused damages to Advance Brands; and
3. The amount of damages.

If Alkar has proven all of these propositions, then it has proven Advance Brands was negligent, and you shall assign a percentage of fault to Advance Brands. This amount will be used in answering the appropriate question on the Verdict Form. If Alkar has failed to prove any of these numbered propositions, then it has not proven Advance Brands was negligent.

**INSTRUCTION NO. 37 – ALKAR’S CLAIM:
GLEESON’S NEGLIGENCE**

Alkar claims Gleeson was negligent. To prove Gleeson was negligent, Alkar must prove all of the following propositions:

1. Gleeson was negligent in one or more of the following ways:
 - a. Designing and installing isolation valves, which, when closed, allowed the user to block access to the pressure relieving devices at the thermal fluid heaters; and/or
 - b. Designing and installing isolation valves without corresponding pressure relief;
2. The negligence caused damages to Advance Brands; and
3. The amount of damages.

If Alkar has proven all of these propositions, then it has proven Gleeson was negligent, and you shall assign a percentage of fault to Gleeson. This amount will be used in answering the appropriate question on the Verdict Form. If Alkar has failed to prove any of these numbered propositions, then it has not proven Gleeson was negligent.

**INSTRUCTION NO. 38 - ALKAR'S CLAIM:
PLAINS BOILER'S NEGLIGENCE**

Alkar claims Plains Boiler was negligent. To prove Plains Boiler was negligent, Alkar must prove all of the following propositions:

1. Plains Boiler was negligent in one or more of the following ways:
 - a. Designing and installing isolation valves, which, when closed, allowed the user to block access to the pressure relieving devices at the thermal fluid heaters; and/or
 - b. Designing and installing isolation valves without corresponding pressure relief;
2. The negligence caused damages to Advance Brands; and
3. The amount of damages.

If Alkar has proven all of these propositions, then it has proven Plains Boiler was negligent, and you shall assign a percentage of fault to Plains Boiler. This amount will be used in answering the appropriate question on the Verdict Form. If Alkar has failed to prove any of these numbered propositions, then it has not proven Plains Boiler was negligent.

INSTRUCTION NO. 39 – SAFETY CODE AND INDUSTRY CUSTOM

You have received evidence about certain safety codes and industry customs. Conformity with these safety codes and industry customs is evidence that a party was not negligent and non-conformity with these safety codes and industry customs is evidence that a party was negligent. Such evidence is relevant and you should consider it but it is not conclusive proof.

INSTRUCTION NO. 40 – DAMAGES GENERALLY

I will now provide you with certain instructions on determining what, if any damages a party is entitled to receive. The fact that I am instructing you on the proper measure of damages should not be considered as an indication that I have any view as to which party is entitled to your verdicts in this case. Instructions as to the measure of damages are given only for your guidance, in the event that you should find that Advance Brands is entitled to damages in accord with the other instructions.

You must not award damages under these Instructions by way of sympathy or punishment. Remember that, throughout your deliberations on damages, as on all other issues, you must not engage in any speculation, guess or conjecture. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice for or against any of the parties. Rather, you must use your sound judgment based upon an impartial consideration of the evidence.

In arriving at the amount of damages on a claim, you cannot establish a figure by taking down the estimate of each juror as to damages and agreeing in advance that the average of those estimates shall be your award of damages for that claim.

INSTRUCTION NO. 41 – PRODUCT LIABILITY DAMAGES

If you find in favor of Advance Brands on either of its products liability claims, namely its design defect claim or its failure to warn claim, then you must award Advance Brands the amount of damages you find will fairly and justly compensate Advance Brands for damages it has sustained due to a defendant's fault.

First, you must determine the amount of damages Advance Brands is entitled to receive for the oven. If you find in favor of Advance Brands on either of these claims, it is entitled to recover the fair and reasonable cost to replace or repair the oven, but not to exceed the value of the oven immediately before the fire. If the oven was not repairable to a condition as good as it was in before the fire, Advance Brands is entitled to recover the value of the oven immediately before the fire.

The value of the oven can be measured by fair market value, or if there is no market value, then by actual value. Fair market value is the price a willing buyer under no compulsion to buy would pay and a willing seller under no compulsion to sell would accept. Actual value is determined by looking to a wide range of factors, such as the original cost of the oven, the age of the oven, the use and utility of the oven, the oven's condition and the cost of restoration or replacement.

Second, you must determine the reasonable costs of cleaning and repairing Advance Brands's damaged building, fire alarm and fire extinguisher.

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INSTRUCTION NO. 41 (Cont'd)

Third, you must determine the amount of loss Advance Brands suffered due to its inability to use the oven while the oven was replaced. Advance Brands is entitled to recover lost profits from its inability to use the oven during the period of time reasonably necessary to repair or replace the oven.

Fourth, you must determine the reasonable cost of replacing Advance Brands's destroyed thermal fluid and inventory.

Fifth, you must determine the other costs and expenses Advance Brands incurred as a result of the incident.

The amounts you find for these items will be used to answer questions on the Verdict Form.

INSTRUCTION NO. 42 – IMPLIED WARRANTY DAMAGES

If you find in favor of Advance Brands on either of its implied warranty claims, namely its implied warranty of fitness for a particular purpose claim or its implied warranty of merchantability claim, then you must award Advance Brands the amount of damages you find will fairly and justly compensate Advance Brands for damages it has sustained due to a defendant's fault.

The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount. This measure of damages is called "direct economic loss."

Advance Brands is not entitled to receive "consequential economic loss" on this claim. Consequential economic losses include all losses caused by the defective product, such as lost profits.

INSTRUCTION NO. 43 - NOTES

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes, and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 44 – DELIBERATIONS

In conducting your deliberations and returning your Verdict Form, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with each other in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because your decisions must be unanimous.

Each of you must make your own conscientious decisions, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should, but do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

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INSTRUCTION NO. 44 (cont'd)

Fourth, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. The verdicts must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

Fifth, I am giving you a Verdict Form. The Verdict Form is simply the written notice of the decisions that you reach in this case. The answers to the Verdict Form must be the unanimous decisions of the jury. You will take the Verdict Form to the jury room, and, when you have completed your deliberations and each of you has agreed on the answers to the Verdict Form, you will fill out the form, sign it and date it. When you have reached your verdicts, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdicts.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return your verdicts in accord with the evidence and these instructions.

DATED this 29th day of June, 2011.



LINDA R. READE
JUDGE, U.S. DISTRICT COURT