

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

JEFFREY KLINGENBERG and
JENNIFER KLINGENBERG,

Plaintiffs,

vs.

VULCAN LADDER USA, LLC and GP
INTERNATIONAL COMPANY,

Defendants.

No. 15-CV-4012-KEM


**INSTRUCTIONS TO THE JURY
(September 25, 2017)**

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IT IS SO ORDERED this 28th day of September, 2017.



Kelly K.E. Mahoney
United States Magistrate Judge
Northern District of Iowa

INSTRUCTION NO. 1 - INTRODUCTION

Ladies and Gentlemen: I am now going to give you some instructions about this case and about your duties as jurors. At the end of the trial, I will give you more instructions. I may also give you instructions during the trial. All instructions - those I give you now and those I give you later - whether they are in writing or given to you orally - are equally important and you must follow them all.

You must leave your cell phone, PDA, smart phone, iPhone, tablet computer, and any other wireless communication devices in the jury room during the trial and may only use them during breaks. However, you are not allowed to have those devices in the jury room during your deliberations. You may give them to the deputy clerk or court security officer for safekeeping just before you start to deliberate. They will be returned to you when your deliberations are complete.

This is a civil case brought by the Plaintiffs Jeffrey Klingenberg and Jennifer Klingenberg against Defendants Vulcan Ladder USA, LLC and G.P. International Company. On February 22, 2013, Mr. Klingenberg was using a ladder designed and distributed by Defendant Vulcan and manufactured and sold by Defendant G.P. International Company. The Plaintiffs claim the ladder contained a design defect, that the ladder failed when Mr. Klingenberg was climbing down from a roof during a home inspection, and that Mr. Klingenberg fell and suffered injuries as a result of the design defect. The Plaintiffs also allege the Defendants are liable because the ladder failed to perform as expressly warranted. Mr. Klingenberg seeks money damages for his injuries, and Mrs. Klingenberg seeks money damages for losses she has suffered because of her husband's injury. The Defendants deny the Plaintiffs' allegations and deny that the Plaintiffs are entitled to money damages. It will be your duty to decide from the evidence whether the Plaintiffs are entitled to recover from any Defendant.

Your duty is to decide what the facts are from the evidence. You are allowed to consider the evidence in the light of your own observations and experiences. After you have decided what the facts are, you will have to apply those facts to the law that I give

you in these and in my other instructions. That is how you will reach your verdict. Only you will decide what the facts are. However, you must follow my instructions, whether you agree with them or not. You have taken an oath to follow the law that I give you in my instructions.

You should consider and decide this case 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 – whether private individuals or public officials, like law enforcement officers – stand equal before the law and are entitled to the same fair consideration.

Do not let sympathy, or your own likes or dislikes, influence you. The law requires you to come to a just verdict based only on the evidence, your common sense, and the law that I give you in my instructions, and nothing else.

Nothing I say or do during this trial is meant to suggest what I think of the evidence or what your verdict should be.

INSTRUCTION NO. 2 - EVIDENCE

When I use the word “evidence,” I mean the testimony of witnesses; documents and other things I receive as exhibits; facts that I tell you the parties have agreed are true; and any other facts that I tell you to accept as true.

Some things are not evidence. I will tell you now what is not evidence:

1. Lawyers’ statements, arguments, questions, and comments are not evidence.
2. Documents or other things that might be in court or talked about, but that I do not receive as exhibits, are not evidence.
3. Objections are not evidence. Lawyers have a right – and sometimes a duty – to object when they believe something should not be a part of the trial. Do not be influenced one way or the other by objections. If I sustain a lawyer’s objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you have to ignore the question or the exhibit, and you must not try to guess what the information might have been.
4. Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence, and you must not consider them.
5. Anything you see or hear about this case outside the courtroom is not evidence, and you must not consider it unless I specifically tell you otherwise.

Also, I might tell you that you can consider a piece of evidence for one purpose only, and not for any other purpose. If that happens, I will tell you what purpose you can consider the evidence for and what you are not allowed to consider it for. You need to pay close attention when I give an instruction about evidence that you can consider for only certain purposes, because you might not have that instruction in writing later in the jury room.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You should not be concerned with those terms, since the law makes no distinction between the weight to be given to direct and circumstantial evidence.

INSTRUCTION NO. 3 - CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 4 – NOTE-TAKING

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written copy of the testimony to refer to. Because of this, you have to pay close attention to the testimony and other evidence as it is presented here in the courtroom.

If you wish, however, you may take notes to help you remember what witnesses say. If you do take notes, do not show them to anyone until you and your fellow jurors go to the jury room to decide the case after you have heard and seen all of the evidence. And do not let taking notes distract you from paying close attention to the evidence as it is presented. The Clerk will provide each of you with a pad of paper and a pen or pencil. At each recess, leave them on your chairs.

When you leave at night, your notes will be locked up and will not be read by anyone.

Upon reaching a verdict, you may leave the notes in the jury room, and they will be destroyed.

INSTRUCTION NO. 5 - BENCH CONFERENCES AND RECESSES

During the trial, I will sometimes need to talk privately with the lawyers. I may talk with them here at the bench while you are in the courtroom, or I may call a recess and let you leave the courtroom while I talk with the lawyers. Either way, please understand that while you are waiting, we are working. We have these conferences to make sure that the trial is proceeding according to the law and to avoid confusion or mistakes. We will do what we can to limit the number of these conferences and to keep them as short as possible.

INSTRUCTION NO. 6 - CONDUCT OF THE JURY

Jurors, to make sure this trial is fair to all parties, you must follow these rules:

First, do not talk or communicate among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to consider your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone tries to talk to you about the case during the trial, please report it to the court security officer or courtroom deputy.

Fourth, during the trial, do not talk with or speak to any of the parties, lawyers, or witnesses in this case – not even to pass the time of day. It is important not only that you do justice in this case, but also that you act accordingly. If a person from one side of the lawsuit sees you talking to a person from the other side – even if it is just about the weather – that might raise a suspicion about your fairness. So, when the lawyers, parties, and witnesses do not speak to you in the halls, on the elevator, or the like, understand that they are not being rude. They know they are not supposed to talk to you while the trial is going on, and they are just following the rules.

Fifth, you may need to tell your family, close friends, and other people that you are a part of this trial. You can tell them when you have to be in court, and you can warn them not to ask you about this case, tell you anything they know or think they know about this case, or talk about this case in front of you. But, you must not communicate with anyone or post information about the parties, witnesses, participants, claims, evidence, or anything else related to this case. You must not tell anyone anything about the jury's deliberations in this case until after I accept your verdict or until I give you specific permission to do so. If you talk about the case with someone besides the other jurors during deliberations, it looks as if you might already have decided the case or that

you might be influenced in your verdict by their opinions. That would not be fair to the parties, and it might result in the verdict being thrown out and the case having to be tried over again. During the trial, while you are in the courthouse and after you leave for the day, do not give any information to anyone, by any means, about this case.

For example, do not talk face-to-face or use any electronic device, such as a telephone, cell phone, smart phone, Blackberry, PDA, computer, or computer-like device.

Likewise, do not use the Internet or any Internet service; do not text or send instant messages; do not go on an Internet chat room, blog, or other websites such as Facebook, MySpace, YouTube, or Twitter. In other words, do not communicate with anyone about this case – except for the other jurors during deliberations – until I accept your verdict.

Sixth, do not do any research – on the Internet, in libraries, newspapers, or otherwise – and do not investigate this case on your own. Do not visit or view any place discussed in this case, and do not use the Internet or other means to search for or view any place discussed in the testimony. Also, do not look up any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the court.

Seventh, do not read any news stories or Internet articles or blogs that are about the case, or about anyone involved with it. Do not listen to any radio or television reports about the case or about anyone involved with it. In fact, until the trial is over I suggest that you avoid reading any newspapers or news journals at all, and avoid listening to any television or radio newscasts at all. I do not know whether there will be news reports about this case, but if there are, you might accidentally find yourself reading or listening to something about the case. If you want, you can have someone clip out any stories and set them aside to give to you after the trial is over. I can assure you, however, that by the time you have heard all the evidence in this case, you will know what you need to return a just verdict.

The parties have a right to have you decide their case based only on evidence admitted here in court. If you research, investigate, or experiment on your own, or get information from other sources, your verdict might be influenced by inaccurate, incomplete, or misleading information. Witnesses here in court take an oath to tell the truth, and the accuracy of their testimony is tested through cross-examination. All of the parties are entitled to a fair trial and an impartial jury, and you have to conduct yourselves in a way that assures the integrity of the trial process. If you decide a case based on information not admitted in court, you will deny the parties a fair trial. You will deny them justice. Remember, you have taken an oath to follow the rules, and you must do so.

Eighth, do not make up your mind during the trial about what your verdict should be. Keep an open mind until after you and your fellow jurors have discussed all the evidence.

INSTRUCTION NO. 7 - OUTLINE OF TRIAL

The trial will proceed in the following manner:

First, the Plaintiffs' lawyer may make an opening statement. Next, the Defendants' lawyer may make an opening statement. An opening statement is not evidence, but it is a summary of the evidence the lawyers expect you will see and hear during the trial.

After opening statements, the Plaintiffs will then present evidence. The Defendants' lawyer will have a chance to cross-examine the Plaintiffs' witnesses. After the Plaintiffs have finished presenting their case, the Defendants may present evidence, and the Plaintiffs' lawyer will have a chance to cross-examine their witnesses.

After you have seen and heard all of the evidence from all sides, the lawyers will make closing arguments that summarize and interpret the evidence. Just as with opening statements, closing arguments are not evidence. After the closing arguments, I will instruct you further on the law, and you will go to the jury room to deliberate and decide on your verdict.

INSTRUCTION NO. 8 - BURDEN OF PROOF

You will have to decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved by the greater weight of the evidence if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than “more likely true than not true.” It applies in criminal cases, but not in this civil case; so put it out of your mind.

INSTRUCTION NO. 9 – DESIGN DEFECT

To recover on the claim that the Defendants’ product was defective in design, the Plaintiffs must prove all of the following propositions:

First, the Defendants sold or distributed the Vulcan ladder involved in this case. Defendants admit this proposition.

Second, the Defendants were engaged in the business of selling or distributing the Vulcan ladder involved in this case. Defendants admit this proposition.

Third, the product was in a defective condition at the time it left the Defendants’ control, in that it was not designed with sufficient stiffening or strengthening elements to assure the C-shaped outer rails remained in a stable and safe configuration in the fully extended position.

Fourth, a reasonable alternative safer design could have been practically adopted at the time of the sale or distribution.

Fifth, the alternative design would have reduced or avoided the foreseeable risks of harm posed by the ladder.

Sixth, the omission of the alternative design rendered the ladder not reasonably safe.

Seventh, the alternative design would have reduced or prevented the Plaintiffs’ harm.

Eighth, the design defect was a cause of the Plaintiffs’ damage.

- A defect in a product is a cause when the damage would not have happened except for the defect.

Ninth, the amount of damage.

If the Plaintiffs have failed to prove any of these propositions, they are not entitled to damages on the design defect claim. If the Plaintiffs have proved all of these propositions, then you will determine their damages as set forth in Instruction Nos. 13 and 14.

***INSTRUCTION NO. 10 – DESIGN DEFECT:
REASONABLE ALTERNATIVE DESIGN***

When determining whether the fourth, fifth, and sixth propositions of Instruction No. 9 have been proven, you may consider the following factors and their interaction to determine whether an alternative design was reasonable and whether its omission rendered the ladder not reasonably safe:

- The magnitude and probability of the foreseeable risks of harm;
- The instructions and warnings accompanying the ladder;
- Consumer expectations about product performance and the dangers accompanying use of the ladder, including expectations arising from product portrayal and marketing;
- Whether the risk presented by the ladder is open and obvious to, or generally known by, foreseeable users;
- The technological feasibility and practicality of the alternative design;
- Whether the alternative design could be implemented at a reasonable cost;
- The relative advantages and disadvantages of the ladder as designed and as it alternatively could have been designed;
- The likely effects of the alternative design on product longevity, maintenance, repair, esthetics, and on the efficiency and utility of the ladder;
- The range of consumer choices among similar products, with and without the alternative design;
- The overall safety of the ladder with and without the alternative design and whether the alternative design would introduce other dangers of equal or greater magnitude;
- Custom and practice in the industry and how the accident ladder’s design compares with other competing products in actual use; and
- Any other factor shown by the evidence bearing on this question.

INSTRUCTION NO. 11 – BREACH OF EXPRESS WARRANTY

To recover on the claim that the Defendants breached an express warranty, the Plaintiffs must prove all of the following propositions:

First, the Defendants sold the Vulcan ladder and expressly warranted that the working weight load of the ladder was 300 pounds and that it could be used in different positions under the 300-pound working weight.

- An express warranty is any promise by a seller about a product that naturally or ordinarily leads the buyer to purchase the product.
- For a promise to be an express warranty, no particular form of words have to be used, nor do the terms “warrant” or “guarantee” have to be used, nor does the seller have to intend to make a warranty. The warranty must relate to a fact and not an opinion about the quality or condition of the product sold. An expression of opinion or belief only, a statement of value, or mere words of praise do not create a warranty.

Second, the Plaintiffs made the purchase relying on the express warranty.

- The fact that a buyer may, to some extent, rely upon his or her own judgment in purchasing goods does not prevent him or her from also relying upon an express warranty made by the seller.

Third, the Vulcan ladder did not conform to the express warranty.

- A product does not conform to an express warranty when defects are substantial and sufficiently serious so that the product fails to materially comply with the express warranty. It is not enough if the defects are small, minor, or insignificant.

Fourth, the breach of the express warranty was a cause of the Plaintiffs’ damage.

Fifth, the amount of damage.

If the Plaintiffs have failed to prove any of these propositions, they are not entitled to damages on the breach of express warranty claim. If the Plaintiffs have proved all of

these propositions, then you will determine their damages as set forth in Instruction Nos. 13 and 14.

INSTRUCTION NO. 12 – STIPULATED FACTS

The Plaintiffs and the Defendants have stipulated – that is, they have agreed – that the following facts are true:

- On the date of the accident, Mr. Klingenberg was using a 17 foot multi-position Vulcan ladder, model number ES-17TIA-SM.
- The ladder Mr. Klingenberg was using was designed and distributed by Defendant Vulcan, and it was manufactured and sold by Defendant GP International Company.
- Mr. Klingenberg purchased the ladder new on September 30, 2011.
- The Vulcan ladder Mr. Klingenberg was using is labeled as being rated as “Type IA Extra Heavy Duty” with a working load of 300 pounds.
- The total billed medical expenses to date to treat Mr. Klingenberg’s injuries from the fall are \$468,710.20. After adjustments, the total amount paid to date is \$68,775.95 and the amount unpaid to date is \$261,819.04.

You must, therefore, treat these facts as having been proved.

INSTRUCTION NO. 13 – DAMAGES

If you find for the Plaintiffs on their design defect claim, you must determine Mr. Klingenberg's damages by considering the following:

- The reasonable cost of necessary hospital and doctor charges, prescriptions, and other medical services from the date of injury to the present time. In determining the reasonable cost of these items, you may consider:
 - the amount charged,
 - the amount actually paid,
 - or any other evidence of what is reasonable and proper for such medical expense.
- The present value of reasonable and necessary hospital and doctor charges, prescriptions, and other medical services that will be incurred in the future.
- The reasonable value of lost wages and time away from business from the date of injury to the present time.
- The present value of loss of future earning capacity.
 - Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.
- Loss of function of the body from the date of the injury to the present time.
 - Loss of body function is the inability of a particular part of the body to function in a normal manner.
- The present value of future loss of function of the body.
- Physical and mental pain and suffering from the date of injury to the present time.
 - Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort.
 - Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

- The present value of future physical and mental pain and suffering.

The amount you assess for physical and mental pain and suffering, future earning capacity, and loss of body function cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damages must not exceed the amount caused by a party as proved by the evidence.

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

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 14 – LOSS OF SPOUSAL CONSORTIUM

“Spousal consortium” is the fellowship of a husband and wife and the right of each other to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry, and attention within the home and family. It does not include loss of financial support from the injured spouse, nor mental anguish caused by the spouse’s injury.

If you find Mrs. Klingenberg is entitled to recover damages, it is your duty to determine the amount. In doing so, you shall consider the following items:

- The reasonable value of loss of spousal consortium that Mrs. Klingenberg would otherwise have received from the date of injury until the present time.
- The present value of loss of spousal consortium that Mrs. Klingenberg would otherwise have received in the future.
 - Damages for loss of spousal consortium are limited in time to the shorter of Mrs. Klingenberg’s or Mr. Klingenberg’s normal life expectancy.

In determining the value for loss of spousal consortium you may consider:

- The circumstances of Mr. Klingenberg’s life.
- Mr. and Mrs. Klingenberg’s ages at the time of Mr. Klingenberg’s injury.
- Mr. Klingenberg’s health, strength, character and life expectancy.
- Mr. Klingenberg’s capabilities and efficiencies in performing the duties of a spouse.
- Mr. Klingenberg’s skills and abilities in providing instructions, guidance, advice, and assistance.
- Mrs. Klingenberg’s needs.
- All other facts and circumstances bearing on this issue.

The amount you assess for loss of spousal consortium cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by the defendants as proved by the evidence.

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 Mr. Klingenberg shall not be included in any amount awarded to Mrs. Klingenberg.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 15 – DEFINITION OF PRESENT VALUE

Future damages must be reduced to present value. “Present value” is a sum of money paid now in advance, which, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future losses.

INSTRUCTION NO. 16 – LIFE EXPECTANCY MORTALITY TABLES

Mr. Klingenberg was born on January 5, 1965, making him 52 years old at this time. According to the United States Department of Health and Human Services National Vital Statistics Reports, Mr. Klingenberg has a life expectancy of 28.2 more years.

Mrs. Klingenberg was born on July 31, 1978, making her 38 years old at this time. According to the United States Department of Health and Human Services National Vital Statistics Report, Mrs. Klingenberg has a life expectancy of 44.6 more years.

The statistics from a mortality table are not conclusive. You may use this information, together with all other evidence, in deciding issues of future life expectancy.

INSTRUCTION NO. 17 - QUOTIENT VERDICT

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. 18 – RECESSES

During this recess, and every other recess, do not discuss this case among yourselves or with anyone else, including your family and friends. Do not allow anyone to discuss the case with you or within your hearing. “Do not discuss” also means do not e-mail, send text messages, blog, or engage in any other form of written, oral, or electronic communication, as I instructed you before.

Do not read any newspaper or other written account, watch any televised account, or listen to any radio program on the subject of this trial. Do not conduct any Internet research or consult with any other sources about this case, the people involved in the case, or its general subject matter. You must keep your mind open and free of outside information. Only in this way will you be able to decide the case fairly based solely on the evidence and my instructions on the law. If you decide this case on anything else, you will have done an injustice. It is very important that you follow these instructions.

I may not repeat these things to you before every recess, but keep them in mind throughout the trial.

INSTRUCTION NO. 19 – DEPOSITION EVIDENCE AT TRIAL

Testimony will now be presented to you in the form of a deposition. A deposition is the recorded answers a witness made under oath to questions asked by lawyers before trial. The deposition testimony to be offered was electronically videotaped and that recording now will be played for you. You should consider the deposition testimony, and judge its credibility, as you would that of any witness who testifies here in person.

INSTRUCTION NO. 20 - ADDITIONAL INSTRUCTIONS

Members of the jury, the instructions I gave at the beginning of the trial and during the trial are still in effect. Now I am going to give you some additional instructions.

You have to follow all of my instructions – the ones I gave you earlier, as well as those I give you now. Do not single out some instructions and ignore others, because they are all important. This is true even though I am not going to repeat some of the instructions I gave you at the beginning of or during the trial.

Remember, you have to follow all instructions, no matter when I give them, and whether or not you have written copies.

INSTRUCTION NO. 21 - JUDGE'S OPINION

I have not intended to suggest what I think your verdicts should be by any of my rulings or comments during the trial.

INSTRUCTION NO. 22 – EXPERT WITNESS TESTIMONY

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 education and experience of the witness, the reasons given for the opinion, and all the other evidence in the case.

The expert witnesses were also 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. 23 – DEMONSTRATIVE SUMMARIES
NOT RECEIVED AS EVIDENCE***

Certain physical items, charts, and summaries have been shown to you in order to help explain the facts disclosed by the books, records, or other underlying evidence in the case. Those physical items, charts, or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts shown by the evidence in the case, you should disregard these physical items, charts, and summaries and determine the facts from the books, records, or other underlying evidence.

INSTRUCTION NO. 24 – INTERROGATORIES

During this trial, you have heard the word “interrogatory.” An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

INSTRUCTION NO. 25 – CORPORATE DEFENDANTS

The fact that a plaintiff or defendant is a corporation should not affect your decision. All person are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 26 - DELIBERATIONS

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

First, you will select a 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 one another in the jury room. You should try to reach agreement, if you can do this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

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

Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges – judges of the facts. Your only job is to study the evidence and decide what is true.

Third, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Give the note to the designated court employee, and I will answer you as soon as I can, either in writing or here in court. While you are deliberating, do not tell anyone - including me - how many jurors are voting for any side.

Fourth, your verdict has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

Finally, the verdict form is your written decision in this case. You will take this form to the jury room, and when you have all agreed on the verdicts, your foreperson will fill in the form, sign and date it, and tell the designated court employee that you are ready to return to the courtroom.

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

JEFFREY KLINGENBERG and
JENNIFER KLINGENBERG,

Plaintiffs,

vs.

VULCAN LADDER USA, LLC and GP
INTERNATIONAL COMPANY,

Defendants.

No. 15-CV-4012-KEM

VERDICT FORM

We the jury unanimously find the following verdict on the questions submitted:

DESIGN DEFECT CLAIM

Question 1: Did Plaintiffs Mr. and Mrs. Klingenberg prove their design defect claim as described in Instruction No. 9?

_____ YES _____ NO

Proceed to Question 2.

EXPRESS WARRANTY CLAIM

Question 2: Did Plaintiffs Mr. and Mrs. Klingenberg prove their express warranty claim as described in Instruction No. 11 as to Defendant Vulcan Ladder?

_____ YES _____ NO

Proceed to Question 3.

Question 3: Did Plaintiffs Mr. and Mrs. Klingenberg prove their express warranty claim as described in Instruction No. 11 as to Defendant GP International Company?

_____ YES _____ NO

If you answered yes to any of the above questions (Questions 1 through 3), proceed to Question 4. If your answer to all of the above questions was no, leave Question 4 blank and sign and date the Verdict Form.

DAMAGES

Question 4: State the amount of damages, if any, sustained by Plaintiffs. If Plaintiffs have failed to prove any item of damage, enter \$0 for that item.

FOR JEFFREY KLINGENBERG:

- 1. Past Medical Expenses \$ _____
- 2. Future Medical Expenses \$ _____
- 3. Loss of Past Earnings \$ _____
- 4. Loss of Future Earning Capacity \$ _____
- 5. Past Loss of Full Body Function \$ _____
- 6. Future Loss of Full Body Function \$ _____
- 7. Past Physical and Mental Pain and Suffering \$ _____
- 8. Future Physical and Mental Pain and Suffering \$ _____
- TOTAL \$ _____

FOR JENNIFER KLINGENBERG:

- 1. Past Loss of Consortium \$ _____
- 2. Future Loss of Consortium \$ _____
- TOTAL \$ _____

Please sign and date the Verdict Form.

Date

Foreperson Signature