

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

DAVID and BARBARA STULTS,

Plaintiffs,

vs.

INTERNATIONAL FLAVORS AND
FRAGRANCES, INC., and BUSH
BOAKE ALLEN, INC.,

Defendants.

No. C 11-4077-MWB

**INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

No. 1 — INTRODUCTION

Congratulations on your selection as a juror!

These Instructions are to help you better understand the trial and your role in it.

This is a civil case brought by plaintiffs David and Barbara Stults, alleging that the Defendants breached the implied warranty of fitness of their butter flavorings containing diacetyl for a foreseeable use in microwave popcorn. They seek damages for David's lung injury and for the injury to Barbara's relationship with her husband. The Defendants deny the Stultses' claims and assert certain specific defenses.

You have been chosen and sworn as jurors to try the issues of fact related to the Stultses' claims and the Defendants' defenses. In making your decisions, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these Instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

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. Individuals and corporations, such as the Defendants, stand equal before the law, and each is entitled to the same fair consideration.

A corporation can act only through its agents or employees, however. Any agent or employee of a corporation may bind it by acts and statements made while acting within the scope of the authority delegated to the agent by the corporation or within the scope of his or her duties as an employee of the corporation.

Also, please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

In these Instructions, I will explain how you are to determine whether or not the parties have proved their claims or defenses. First, however, I will explain some preliminary matters, including the burden of proof, what is evidence, and how you are to treat the testimony of witnesses.

No. 2 — BURDEN OF PROOF

Your verdict depends on what facts have been proved. Unless I tell you otherwise, facts must be proved “by the greater weight of the evidence.” This burden of proof is sometimes called “the preponderance of the evidence.”

“Proof by the greater weight of the evidence” is proof that a fact is more likely true than not true.

- It does not depend on which side presented the greater number of witnesses or exhibits
- It requires you to consider all of the evidence and decide which evidence is more convincing or believable
 - For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict that witness’s testimony
 - You are free to disbelieve any testimony or other evidence that you do not find convincing or believable
- If, on any issue in the case, you find that the evidence is equally balanced, then you cannot find that the issue has been proved

You may have heard that criminal charges require “proof beyond a reasonable doubt.” That is a stricter standard that does not apply in a civil case, such as this one.

No. 3 — DEFINITION OF EVIDENCE

Evidence *is*

- Testimony
 - Testimony may be either “live” or “by deposition”
 - A “deposition” is testimony taken under oath before the trial and preserved in writing or on video
 - Consider “deposition” testimony as if it had been given in court
- Answers to interrogatories
 - An interrogatory is a written question asked before trial 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
- Exhibits admitted into evidence
 - Just because an exhibit may be shown to you does not mean that it is more important than any other evidence
- Stipulations
 - Stipulations are agreements between the parties
 - If the parties stipulate that certain facts are true, then you must treat those facts as having been proved

Evidence *is not*

- Testimony that I tell you to disregard

- Exhibits that are not admitted into evidence
- Statements, arguments, questions, and comments by the lawyers
- Objections and rulings on objections
- Anything that you see or hear about this case outside the courtroom

Charts and summaries

Some exhibits consisting of charts and summaries may be shown to you in order to help explain the facts disclosed by books, records, or other underlying evidence in the case

- Such summary exhibits are not evidence or proof of any facts
- They are used for convenience
- In deciding how much weight to give summaries, you must
 - decide if they correctly reflect the facts shown by the evidence
 - consider testimony about the way in which the summaries were prepared

“Direct” and “circumstantial” evidence

You may have heard of “direct” and “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
 - An example is testimony by a witness about what that witness personally saw or heard or did
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact

- An example is testimony that a witness personally saw a broken window and a brick on the floor from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction between their weight

Evidence admitted for a limited purpose

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

Weight of evidence

The weight to be given any evidence—whether that evidence is “direct” or “circumstantial,” or in the form of testimony, an exhibit, or a stipulation—is for you to decide.

~~*“Missing” evidence*~~

~~The Defendants contend that David Stults destroyed or failed to preserve notes that he had made in June 2012 to identify the microwave popcorn brands that he allegedly consumed over the years. You may, but are not required to, find that the missing notes would have been unfavorable to the Stultses if you find all of the following:~~

- The notes were within the Stultses' control
- The Stultses could have produced the notes
- The Stultses have given no reasonable excuse for failure to produce the notes, and
- The notes would have been significant to an issue in the case, and not merely additional evidence on that issue

Any finding that you may make about whether the missing notes would have been unfavorable to the Stultses should be based on all of the facts and circumstances in this case.

No. 4 — TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's
 - intelligence
 - memory
 - opportunity to have seen and heard what happened
 - motives for testifying
 - interest in the outcome of the case
 - manner while testifying
 - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes, or are, instead, the result of lies or phony memory lapses
- whether the witness has been convicted of a felony offense, but only to help you decide whether to believe that witness and how much weight to give his or her testimony, and
- any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because the witness is an expert

- Persons may become qualified as experts in some field by knowledge, skill, training, education, or experience
- Although witnesses ordinarily may only testify to factual matters within their personal knowledge, experts may state their opinions on matters in their field and may also state the reasons for their opinions
- An expert witness may be asked a "hypothetical question," in which the expert is asked to assume certain facts are true and to give an opinion based on that assumption
- If a "hypothetical question" assumes a fact that is not proved by the evidence, you should decide if the fact not proved affects the weight that you should give to the expert's answer

You may give any witness's opinion whatever weight you think it deserves, but you should consider

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

It is your exclusive right to give any witness's testimony whatever weight you think it deserves.

No. 5 — THE PARTIES' CLAIMS AND DEFENSES

The Stultses assert the following claims:

- a *“breach of implied warranty” claim*, based on their allegation that the Defendants’ butter flavorings containing diacetyl were not reasonably fit for a reasonably foreseeable use in microwave popcorn; and
- a *“loss of consortium” claim*, based on their allegation that the injuries to David Stults from the Defendants’ wrongful conduct caused damage to his relationship with his wife, Barbara

You must decide your verdict on the Stultses’ claims without regard to either of the Defendants’ specific defenses, described below. I will determine the effect of any specific defense, described below, that you find the Defendants have proved.

In addition to the Defendants’ arguments that the Stultses cannot prove their claims, the Defendants assert two specific defenses to the Stultses’ claims:

- a *“sole proximate cause” defense*, based on their allegation that David Stults has a medical condition unrelated to his inhalation of butter flavorings containing diacetyl that is the sole proximate cause of his injuries; and
- a *“fault of others” defense*, based on their allegation that others were at fault for David’s injuries

Again, unless I tell you otherwise, you must consider each specific defense separately

- you must decide whether or not the Defendants have proved each specific defense without regard to any other claim or specific defense
- I will determine the effect of any specific defense that you find the Defendants have proved

Each claim or specific defense consists of “elements,” which are the parts of the claim or specific defense

- The “elements” of each claim and specific defense are set out below in **bold**
- The party asserting the claim or specific defense must prove all of the elements of that claim or specific defense by the greater weight of the evidence
- I will explain the elements of the claims and specific defenses in the following instructions

No. 6 — “PROXIMATE CAUSE”

The Stultses’ claims and some of the Defendants’ specific defenses have as an element whether or not certain conduct was a “proximate cause” of injury.

“Proximate cause” means *both* of the following

- that the conduct was a substantial factor in producing the plaintiff’s injury
 - “‘Substantial’ means that the conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause

and

- that the plaintiff’s injury was of a type that is a natural and probable result of the conduct

There may be more than one proximate cause.

- The conduct of a defendant need not be the only cause or the last cause of injury to be a proximate cause of that injury
- Conduct of a defendant may be a proximate cause of injury, even if that conduct and the conduct of another, or another force, or another circumstance acted at the same time or in combination to produce the injury

**No. 7 — THE STULTSES’ “BREACH OF IMPLIED
WARRANTY” CLAIM**

The Stultses’ first claim is that the Defendants breached the implied warranty of fitness of their butter flavorings containing diacetyl for a foreseeable use in microwave popcorn. The Defendants deny this “breach of implied warranty” claim.

An “implied warranty” is a duty imposed by law on a manufacturer that its product be reasonably fit for a use or purpose anticipated or reasonably foreseeable by the manufacturer. A manufacturer “breaches” an implied warranty when its product is not reasonably fit for a use or purpose anticipated or reasonably foreseeable by the manufacturer.

Thus, to win on their “breach of implied warranty” claim, the Stultses must prove all of the following elements by the greater weight of the evidence:

***One*, the use of the Defendants’ butter flavorings containing diacetyl in microwave popcorn was a use or purpose anticipated or reasonably foreseeable by the Defendants.**

***Two*, the Defendants’ butter flavorings containing diacetyl were not reasonably fit for use in microwave popcorn.**

The Stultses contend that the Defendants’ butter flavorings containing diacetyl were not reasonably fit for use in microwave popcorn in the following way:

- The diacetyl fumes emitted from the heated butter flavoring were potentially hazardous to breathe

The Stultses also contend that:

- Diacetyl-free butter flavorings, which did not emit fumes that were potentially hazardous to breathe, were available for use in microwave popcorn

The Stultes are not required to prove that the Defendants breached the implied warranty in *both* of these ways. Rather, this element is proved if you find that the Defendants breached the implied warranty in one or both of these ways.

Three, the Defendants' butter flavorings containing diacetyl were not reasonably fit for use in microwave popcorn at the time that they left the Defendants' control.

Four, David Stults suffered injury after consuming Orville Redenbacher Butter® microwave popcorn produced by ConAgra with the Defendants' butter flavorings containing diacetyl.

Five, the unfitness of the Defendants' butter flavorings containing diacetyl for use in microwave popcorn was a proximate cause of David Stults's injury.

"Proximate cause" was defined for you in Instruction No. 6. As to the "substantial factor" requirement of "proximate cause," the unfitness of the Defendants' butter flavorings containing diacetyl for use in microwave popcorn was not a substantial factor in producing David Stults's injury, unless

- the butter flavorings were in Orville Redenbacher Butter® microwave popcorn produced by ConAgra at the time that David Stults was injured

- David Stults consumed that microwave popcorn, and
- the butter flavorings had such an effect in producing damage as to lead a reasonable person to regard them as a cause of the damage

Remember that, to establish “proximate cause,” the Stultses must also prove the second requirement, that David’s injury was of a type that is a natural and probable result of the unfitness of the Defendants’ butter flavorings containing diacetyl for use in microwave popcorn.

If the Stultses do *not* prove *all* of these elements by the greater weight of the evidence, then you must find in favor of the Defendants on the Stultses’ “breach of implied warranty” claim. On the other hand, if the Stultses *do* prove *all* of these elements by the greater weight of the evidence, then you must consider their claims for “damages” for a “breach of implied warranty.”

**No. 8 — PERMANENT LOSS OF A VITAL BODILY
FUNCTION AND RECKLESSNESS**

The Stultses contend that the wrongful conduct of the Defendants at issue in their “breach of implied warranty” claim (1) caused David a permanent loss of a vital bodily function and (2) was reckless. If the Stultses win on their “breach of implied warranty” claim, you must also consider whether the Stultses have proved these contentions.

Permanent loss of a vital bodily function

To win on their contention that the Defendants’ wrongful conduct caused David a permanent loss of a vital bodily function, the Stultses must prove the following element by the greater weight of the evidence:

As a result of the Defendants’ breach of the implied warranty of fitness of their butter flavorings containing diacetyl for use in microwave popcorn, David sustained a permanent loss of a vital bodily function.

A “vital bodily function” is a bodily function that has a high degree of importance.

If the Stultses do *not* prove this element by the greater weight of the evidence, then you must indicate in the Verdict Form that the Defendants’ wrongful conduct at issue in the Stultses’ “breach of implied warranty” claim did not cause a “permanent loss of a vital bodily function.” On the other hand, if the Stultses *do* prove this element by the greater weight of the evidence, then you must indicate in the Verdict Form that the Defendants’ wrongful conduct at issue in the Stultses’

“breach of implied warranty” claim did cause a “permanent loss of a vital bodily function.”

Recklessness

If you find that the Defendants’ wrongful conduct caused a permanent loss of a vital bodily function, then you must also decide whether the Defendants’ wrongful conduct was reckless.

To win on their contention that the Defendants’ wrongful conduct was reckless, the Stultses must prove the following element by the greater weight of the evidence:

The Defendants’ breach of the implied warranty of fitness of their butter flavorings containing diacetyl for use in microwave popcorn was so reckless as to demonstrate a substantial lack of concern for whether an injury would result.

If the Stultses do *not* prove this element by the greater weight of the evidence, then you must indicate in the Verdict Form that the Defendants’ wrongful conduct at issue in the Stultses’ “breach of implied warranty” claim was not “reckless.” On the other hand, if the Stultses *do* prove this element by the greater weight of the evidence, then you must indicate in the Verdict Form that the Defendants’ wrongful conduct at issue in the Stultses’ “breach of implied warranty” claim was “reckless.”

You need not be concerned with the effect of your determinations on these two contentions. The effect of your determinations on these contentions is for me to decide.

**No. 9 — THE STULTSES’ “LOSS OF
CONSORTIUM” CLAIM**

The Stultses’ second claim is that the injuries to David Stults from the Defendants’ breach of implied warranty caused damage to his relationship with his wife, Barbara. A claim of damage to the spousal relationship is called a “loss of consortium” claim. The Defendants deny this “loss of consortium” claim.

To win on their “loss of consortium” claim, the Stultses must prove both of the following elements by the greater weight of the evidence:

***One*, the Stultses have proved their “breach of implied warranty” claim.**

***Two*, the injuries to David resulting from the Defendants’ breach of implied warranty proximately caused damage to Barbara’s relationship with David.**

“Proximate cause” was defined for you in Instruction No. 6. Damage to the marital relationship includes

- Barbara’s loss of the services of her injured husband
- Barbara’s loss of the society, companionship, and sexual relationship with her injured husband

If the Stultses do *not* prove *both* of these elements by the greater weight of the evidence, then you must find in favor of the Defendants on the Stultses’ “loss of consortium” claim. On the other hand, if the Stultses *do* prove *both* of these

elements by the greater weight of the evidence, then you must consider their claims for “damages” for “loss of consortium.”

No. 10 — DAMAGES IN GENERAL

It is my duty to instruct you about the measure of damages. By instructing you on damages, I do not mean to suggest what your verdict should be on any claim.

If you find for the Stultses on their “breach of implied warranty” claim, you must determine what damages to award. “Damages” are the amount of money that will reasonably and fairly compensate the Stultses for any injury that you find they suffered as a result of the Defendants’ wrongful conduct

- It is for you to determine what damages, if any, have been proved
- Any damages award must be based upon evidence and not upon speculation, guesswork, or conjecture
- Your verdict must be solely to compensate the Stultses damages, and not to punish the Defendants
- The amount of money to be awarded for certain items of damages cannot be proved in a precise dollar amount
 - The law leaves such amount to your sound judgment
 - You must base your determination of the amount of such damages on the evidence presented
- You cannot determine the amount for a particular item of damages by taking down each juror’s estimate and agreeing in advance that the average of those estimates will be your award for that item of damages

- You must not award duplicate damages, so do not allow amounts awarded under one item of damages to be included in any amount awarded under another item of damages

You may award future damages, if you find that the damages are of a continuing nature. Future damages

- must be limited to the length of time that the injury may continue
- must be limited to David's life expectancy, if the injury is permanent
 - a Standard Mortality Table indicates that the normal life expectancy of people who are the same age as David is an additional 26.3 years, or until he is 80.3 years of age, but those statistics are not conclusive
- must not be reduced to "present cash value"
- may be adjusted to consider the effect of inflation

No. 11 — ITEMS OF DAMAGES

The Stultses seek certain items of past and future “economic” and “non-economic” damages. “Economic” damages consist of such things as medical expenses, lost wages or lost earning potential, and miscellaneous expenses. “Non-economic” damages consist of such things as damages or loss due to pain, suffering, inconvenience, physical impairment, physical disfigurement, mental anguish, embarrassment, humiliation, mortification, and denial of social pleasures and enjoyments.

“Past” damages are to compensate the Stultses from the date of injury to the time of your verdict. “Future” damages are to compensate the Stultses for continuing damage from the date of your verdict into the future.

You must consider each item of damages separately and award only those amounts of damages, if any, that will compensate the Stultses for injuries that they suffered as a result of the Defendants’ breach of implied warranty.

Damages For David’s Injuries

If you find that the Stultses have proved their “breach of implied warranty” claim, you may award the following items of damages, as proved by the evidence.

Economic Damages

- “Past economic damages” include, but are not limited to, the following
 - ~~reasonable expenses of necessary medical care, treatment, and services~~
 - lost wages

- ~~reasonable expenses that have been required as a result of David's injury~~
- **“Future economic damages”** include, but are not limited to, the following:
 - reasonable expenses of necessary medical care, treatment, and services that David Stults is reasonably certain to require in the future
 - loss of future earning capacity
 - reasonable expenses that are reasonably certain to be required in the future as a result of David's injury

Non-Economic Damages

- **“Past non-economic damages”** include, but are not limited to, the following:
 - mental pain and suffering, including mental anguish, denial of social pleasure and enjoyments, and embarrassment, humiliation, or mortification
 - physical pain and suffering, and
 - disability, including the loss or impairment of lung function
- **“Future non-economic damages”** include, but are not limited to, the following:
 - mental pain and suffering that is reasonably certain to continue in the future

- physical pain and suffering that is reasonably certain to continue in the future, and
- disability, including the loss or impairment of lung function, that is reasonably certain to continue in the future

Damages For Loss Of Consortium

If you find that the Stultses have proved their “loss of consortium” claim, you may award the following items of damages, as proved by the evidence.

Economic Damages

- **“Past economic damages”** for loss of consortium consist of Barbara’s loss of the services of her injured husband
- **“Future economic damages”** for loss of consortium consist of Barbara’s loss of the services of her injured husband that are reasonably certain to continue in the future

Non-Economic Damages

- **“Past non-economic damages”** for loss of consortium consist of Barbara’s loss of the society, companionship, and sexual relationship with her injured husband
- **“Future non-economic damages”** for loss of consortium consist of Barbara’s loss of the society, companionship, and sexual relationship with her injured husband that is reasonably certain to continue in the future

**No. 12 — THE DEFENDANTS’ “SOLE PROXIMATE
CAUSE” SPECIFIC DEFENSE**

The Defendants’ first specific defense is a “sole proximate cause” defense, based on their allegation that David Stults has a medical condition unrelated to his inhalation of butter flavorings containing diacetyl that is the sole proximate cause of his injuries.

To prove their “sole proximate cause” specific defense, the Defendants must prove both of the following elements by the greater weight of the evidence:

***One*, David Stults has a medical condition unrelated to his inhalation of butter flavoring containing diacetyl.**

***Two*, that medical condition was the sole proximate cause of David Stults’s damages.**

“Proximate cause” was defined for you in Instruction No. 6. To be the “sole proximate cause,” the medical condition in question

- must be the *only* cause of David’s injury
- must not have acted at the same time or in combination with the Defendants’ breach of implied warranty to produce David’s injury

If the Defendants do *not* prove *both* of these elements by the greater weight of the evidence, then you must find in favor of the Stultses on the Defendants’ “sole proximate cause” defense. On the other hand, if the Defendants *do* prove *both* of these elements by the greater weight of the evidence, then you must find in favor of the Defendants on their “sole proximate cause” defense. You must not

be concerned with the effect of your finding on this specific defense. The effect of your finding on this specific defense is for me to determine.

**No. 13 — THE DEFENDANTS’ “FAULT OF
OTHERS” SPECIFIC DEFENSE**

The Defendants’ second specific defense is a “fault of others” defense, based on their allegation that others were at fault for David’s injuries. The fault of a non-party does not bar recovery by the Stultses against the Defendants. Rather, if you find that the Defendants and one or more identified non-parties are at fault, then you must allocate the total fault among the Defendants and the identified non-parties who are at fault. The Stultses deny that anyone other than the Defendants was at fault for their injuries.

To prove its “fault of others” specific defense, the Defendants must prove both of the following elements by the greater weight of the evidence:

One, one or more microwave popcorn manufacturers or suppliers of butter flavorings containing diacetyl were at fault for the Stultses’ injuries.

“Fault” includes an act or an omission, including a design defect, a warning defect, or a breach of warranty, sufficient to impose liability, that is a proximate cause of damage sustained by a party.

A manufacturer or supplier has a duty to use “reasonable care” in designing or providing warnings with its product to eliminate any unreasonable risk of foreseeable injury. “Reasonable care” means the degree of care that a reasonably prudent manufacturer would exercise under the circumstances that you find existed in this case.

To prove that a non-party was at fault for a design defect, the Defendants must prove the following elements:

- the non-party designed butter flavorings containing diacetyl for microwave popcorn
- the non-party failed to use reasonable care at the time of designing butter flavorings containing diacetyl
- the butter flavorings containing diacetyl were not reasonably safe for consumers as an ingredient of microwave popcorn at the time that they left the non-party's control
- a reasonable alternative safer design existed at the time of sale or distribution of the non-party's butter flavorings containing diacetyl
 - This element requires proof that
 - a practical and technically feasible alternative design was available, *and*
 - that alternative design would have prevented the harm that David Stults suffered
 - the design defect in the non-party's butter flavorings containing diacetyl was a proximate cause of David Stults's injury

To prove that a non-party was at fault for a warning defect, the Defendants must prove the following elements:

- the non-party labeled and distributed butter flavorings containing diacetyl for microwave popcorn
- the non-party was in a position to warn consumers of the dangers of butter

flavorings containing diacetyl in microwave popcorn

- the non-party failed to use reasonable care in providing warnings on its butter flavorings containing diacetyl
- the omission of one or more instructions or warnings rendered the non-party's butter flavorings containing diacetyl not reasonably safe for consumers of microwave popcorn
- the omission of one or more instructions or warnings on the non-party's butter flavoring containing diacetyl was a proximate cause of David Stults's injury

To prove that a non-party was at fault for breach of an implied warranty, the Defendants must prove the elements explained in Instruction No. 7.

The Defendants contend that one or more of the following non-parties were at fault for the Stultses' injuries:

- manufacturers of microwave popcorn consumed by David Stults:
 - American Pop Corn Company
 - ConAgra Foods, Inc., and
 - General Mills, Inc.
- other suppliers of microwave popcorn butter flavorings containing diacetyl:
 - Givaudan Flavors Corporation
 - Chr. Hansen, Inc.
 - Firmenich Inc.

- Sensient Flavors, Inc., and
- Symrise, Inc.

You must decide whether the Defendants have proved that one or more of these non-parties were at fault, in one or more of the ways alleged, for the Stultses' injuries.

Two, the fault of such a non-party was a proximate cause of the Stultses' injuries.

“Proximate cause” was defined for you in Instruction No. 6. The fault of a non-party was not a substantial factor in producing David Stults's injury, unless

- that non-party made butter flavoring containing diacetyl for microwave popcorn or made microwave popcorn with butter flavoring containing diacetyl at the time that David Stults was injured
- David Stults consumed that butter flavoring in microwave popcorn or consumed that microwave popcorn, and
- the butter flavoring had such an effect in producing damage as to lead a reasonable person to regard it as a cause of the damage

Remember that, to be a “proximate cause” of David's injury, David's injury must also have been of a type that is a natural and probable result of consuming the non-party's butter flavoring containing diacetyl or the non-party's microwave popcorn with butter flavoring containing diacetyl.

If the Defendants prove that a particular non-party was at fault, by proving both of these elements as to that non-party, then you must allocate a percentage of

fault to that non-party. In determining the percentage of fault of the Defendants and any non-parties found to be at fault, you must consider the nature of the conduct of each entity and the extent to which each entity's conduct caused or contributed to the Stultses' injury. The total must add up to 100 percent.

No. 14 — OUTLINE OF THE TRIAL

I will now explain how the trial will proceed.

After I have read all but the last Instruction,

- The lawyers may make opening statements
 - An opening statement is not evidence
 - It is simply a summary of what the lawyer expects the evidence to be
- The Stultses will present evidence and call witnesses and the lawyer for the Defendants may cross-examine them
- The Defendants may present evidence and call witnesses, and the lawyer for the Stultses may cross-examine those witnesses
- The parties will make their closing arguments
 - Closing arguments summarize and interpret the evidence for you
 - Like opening statements, closing arguments are not evidence
- I will give you the last Instruction, on “deliberations”
- You will retire to deliberate on your verdict
- You will indicate your verdict on the Stultses’ claims and the Defendants’ defenses in a Verdict Form, a copy of which is attached to these Instructions
 - A Verdict Form is simply a written notice of your decision

- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question
- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict

No. 15 — OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

No. 16 — BENCH CONFERENCES

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- Please be patient, because these conferences are
 - to decide how certain evidence is to be treated
 - to avoid confusion and error, and
 - to save your valuable time
- We will do our best to keep such conferences short and infrequent

No. 17 — NOTE-TAKING

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

No. 18 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.
- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell

them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.

- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on biases. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining Instruction at the end of the evidence.

No. 19 — DELIBERATIONS


In conducting your deliberations and returning your verdict, there are certain rules that you must follow.

- When you go to the jury room, select one of your members as your foreperson to preside over your discussions and to speak for you here in court
- Discuss this case with one another in the jury room to try to reach agreement on the verdict, if you can do so consistent with individual judgment
 - Nevertheless, each of you must make your own conscientious decision, after considering all the evidence, discussing it fully with your fellow jurors, and listening to the views of your fellow jurors
- Do not be afraid to change your opinions if the discussion with other jurors 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 that you are not advocates, but judges—judges of the facts
 - Your sole interest is to seek the truth from the evidence in the case.

- If you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer (CSO), 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
- Base your verdict solely on the evidence and on the law as I have given it to you in my Instructions
 - Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide
- Your verdict on each question submitted must be unanimous
- Complete and sign one copy of the Verdict Form
 - The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict
- When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

Good luck with your deliberations.

DATED this 11th day of August, 2014.



MARK W. BENNETT
U.S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

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

DAVID and BARBARA STULTS,

Plaintiffs,

vs.

INTERNATIONAL FLAVORS AND
FRAGRANCES, INC., and BUSH
BOAKE ALLEN, INC.,

Defendants.

No. C 11-4077-MWB

VERDICT FORM

On the Stultses' claims and the Defendants' specific defenses, we, the Jury,
find as follows:

I. THE STULTSES' CLAIMS			
Step 1: Verdicts	On each of the Stultses' claims, in whose favor do you find? <i>(If you find in favor of the Stultses on their "breach of implied warranty" claim, go on to consider your verdict on Barbara Stults's "loss of consortium" claim in Step 1(b) and the remaining questions in the verdict form. On the other hand, if you find in favor of the Defendants on the Stultses' "breach of implied warranty" claim in Step 1(a), then do not answer any further questions in the Verdict Form. Instead, please sign the Verdict Form and notify the Court Security Officer (CSO) that you have reached a verdict.)</i>		
(a)	On the "breach of implied warranty" claim, as explained in Instruction No. 7?	___ The Stultses	___ The Defendants
(i)	<i>If you found in favor of the Stultses on the "breach of implied warranty" claim in Step 1(a), in which one or both of the following ways was the implied warranty breached?</i>		
	___ The diacetyl fumes emitted from the heated butter flavoring were potentially hazardous to breathe		
	___ Diacetyl-free butter flavorings, which did not emit fumes that were potentially hazardous to breathe, were available for use in microwave popcorn		

(ii)	<i>If you found in favor of the Stultses on the “breach of implied warranty” claim in Step 1(a), did the wrongful conduct of the Defendants at issue in the “breach of implied warranty” claim cause David a permanent loss of a vital bodily function, as explained in Instruction No. 8? (I will determine the effect of your determination on this question.)</i>		
	___ Yes	___ No	
(iii)	<i>If you found in favor of the Stultses on the “breach of implied warrant” claim in Step 1(a), and you found that David Stults sustained a permanent loss of a vital bodily function in Step(1)(a)(ii), do you find that the Defendants’ conduct in causing the permanent loss of a vital bodily function was so reckless as to demonstrate a substantial lack of concern for whether an injury would result, as explained in Instruction No. 8?</i>		
	___ Yes	___ No	
(b)	On the “loss of consortium” claim, as explained in Instruction No. 9?	___ The Stultses	___ The Defendants
Step 2: Damages	What amounts, if any, do you award for each of the following items of compensatory damages, on each claim on which you found that the Stultses won in Step 1(a) , as items of damages are explained in Instruction No. 11?		
(a)	Damages For David’s Injuries		
(i)	Economic damages		
	Past reasonable expenses of necessary medical care, treatment, and services:	\$ _____	
	Future reasonable expenses of necessary medical care, treatment, and services:	\$ _____	
	Past lost wages:	\$ _____	
	Future lost earning capacity:	\$ _____	
	Past reasonable expenses that have been required as a result of David’s injury:	\$ _____	
	Future reasonable expenses that are reasonably certain to be required in the future as a result of David’s injury:	\$ _____	
	Total of economic damages:	\$ _____	
(ii)	Non-economic damages		
	Past mental pain and suffering	\$ _____	

	Future mental pain and suffering:	\$ _____
	Past physical pain and suffering:	\$ _____
	Future physical pain and suffering:	\$ _____
	Past disability, including the loss or impairment of lung function:	\$ _____
	Future disability, including the loss or impairment of lung function	\$ _____
	Total of non-economic damages:	\$ _____
(b)	Damages For Loss Of Consortium	
(i)	Economic damages	
	Past loss of the services:	\$ _____
	Future loss of services:	\$ _____
	Total of economic damages:	\$ _____
(ii)	Non-economic damages	
	Past loss of the society, companionship, and sexual relationship:	\$ _____
	Future loss of the society, companionship, and sexual relationship:	\$ _____
	Total of non-economic damages:	\$ _____

II. THE DEFENDANTS' SPECIFIC DEFENSES		
Step 1: Sole Proximate Cause	On the Defendants' "sole proximate cause" specific defense, as explained in Instruction No. 12, in whose favor do you find? <i>(You must not be concerned with the effect of your finding on this specific defense. The effect of your finding on this specific defense is for me to determine.)</i>	
	___ The Defendants	___ The Stultses
Step 2: Fault Of Others	On the Defendants' "fault of others" specific defense, as explained in Instruction No. 13, in whose favor do you find? <i>(If you find in favor of the Defendants, please answer the question in Step 2(b). On the other hand, if you find in favor of the Stultses, please sign the Verdict Form and notify the Court Security Officer (CSO) that you have reached a verdict.)</i>	
(a)	___ The Defendants	___ The Stultses

(b)	<p><i>If you found in favor of the Defendants in Step 2(a), please identify (i) which one or more non-parties were at fault, (ii) the way or ways in which each such non-party was at fault, and (iii) each such non-party's percentage of fault. You must then allocate the Defendants a percentage of fault. Remember that the percentage of the Defendants' fault and the percentage of fault of any non-parties must add up to 100 percent.</i></p>		
	(i) non-parties at fault	(ii) way(s) that non-party was at fault	(iii) percentage of fault
	___ American Pop Corn Company	___ Design defect ___ Warning defect ___ Breach of implied warranty	___ %
	___ ConAgra Foods, Inc.	___ Design defect ___ Warning defect ___ Breach of implied warranty	___ %
	___ General Mills, Inc.	___ Design defect ___ Warning defect ___ Breach of implied warranty	___ %
	___ Givaudan Flavors Corp.	___ Design defect ___ Warning defect ___ Breach of implied warranty	___ %
	___ Chr. Hansen, Inc.	___ Design defect ___ Warning defect ___ Breach of implied warranty	___ %
	___ Firmenich, Inc.	___ Design defect ___ Warning defect ___ Breach of implied warranty	___ %
	___ Sensient Flavors, Inc.	___ Design defect ___ Warning defect ___ Breach of implied warranty	___ %

	___ Symrise, Inc.	___ Design defect ___ Warning defect ___ Breach of implied warranty	___ %
	The Defendants		___ %
	Total of the Defendants' and any Non-Parties' fault (Must add up to 100%)		___ %

_____ Date

Foreperson	Juror
Juror	Juror
Juror	Juror
Juror	Juror