

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

SWAN LAKE HOLDINGS, LLC,

Plaintiff,

vs.

YAMAHA GOLF-CAR COMPANY,

Defendant.

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3:09-CV-228

COURT'S FINAL JURY INSTRUCTIONS

Date: March 16, 2011

/s/ Philip P. Simon
Philip P. Simon, Chief Judge
United States District Court

FINAL INSTRUCTION NO. 1

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

FINAL INSTRUCTION NO. 2

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

FINAL INSTRUCTION NO. 3

The evidence consists of the testimony of the witnesses and the exhibits admitted in evidence.

FINAL INSTRUCTION NO. 4

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

FINAL INSTRUCTION NO. 5

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

FINAL INSTRUCTION NO. 6

You will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. Exhibits 5, 6, and 7 were not admitted to prove the truth of the matters asserted in those documents. Rather, those exhibits were admitted to show that Yamaha was put on notice of the problems with the golf cars and to put into context Mr. Richard Brown's responsive email (Exhibit 8). You must consider Exhibits 5, 6, and 7 only for the limited purpose for which they were admitted.

FINAL INSTRUCTION NO. 7

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

FINAL INSTRUCTION NO. 8

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

FINAL INSTRUCTION NO. 9

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- the witness's age; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

FINAL INSTRUCTION NO. 10

You may consider statements given by a witness under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statements or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

FINAL INSTRUCTION NO. 11

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

FINAL INSTRUCTION NO. 12

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

FINAL INSTRUCTION NO. 13

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

FINAL INSTRUCTION NO. 14

Certain diagrams have been shown to you. Those diagrams are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

FINAL INSTRUCTION NO. 15

Swan Lake claims that Yamaha breached the warranty between the parties. To succeed on this claim, Swan Lake must prove two things by a preponderance of the evidence:

(1) that Yamaha breached the warranty; and

(2) that the breach of the warranty was a responsible cause of Swan Lake's loss.

If you find that Swan Lake did not prove by a preponderance of the evidence both of these things, then you must find for Yamaha. If, on the other hand, Swan Lake has proved both of these things, you must find for Swan Lake and decide the proper measure of damages to award to Swan Lake.

FINAL INSTRUCTION NO. 16

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

FINAL INSTRUCTION NO. 17

A warranty is an assurance or guaranty in the form of a statement by a seller of goods.

FINAL INSTRUCTION NO. 18

A breach of warranty occurs when a party fails to perform all the duties it agreed to do.

In order for there to be a breach of warranty, the goods must be defective upon delivery.

It is not a breach of warranty if the goods later become defective through abuse or neglect.

FINAL INSTRUCTION NO. 19

Conduct that causes a loss is a “responsible cause” for that loss if:

- (1) the loss would not have occurred without the cause and
- (2) the loss was a natural, probable, and foreseeable result of the cause.

FINAL INSTRUCTION NO. 20

The measure of damages for breach of express warranty is the difference between the value of the goods delivered and the value they would have had if they had been delivered as warranted.

One way of measuring the difference in the value of the goods that were warranted (the goods without defects) and the value of the goods that were actually delivered (the goods with defects) is the cost of repairing the defects.

FINAL INSTRUCTION NO. 21

If you award damages to Swan Lake, you should calculate the value (if any) Swan Lake received from its use of the golf cars and subtract that amount from the overall damage calculation.

FINAL INSTRUCTION NO. 22

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

A form of verdict has been prepared for you. Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in and date the appropriate form, and all of you will sign it.

FINAL INSTRUCTION NO. 23

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

FINAL INSTRUCTION NO. 24

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.