

IN THE IOWA DISTRICT COURT IN AND FOR FAYETTE COUNTY

MARK VAGTS, JOAN VAGTS, ANDREW VAGTS AND VAGTS DAIRY, LLC, Plaintiff(s), v. NORTHERN NATURAL GAS COMPANY, Defendant(s).	* * * * * * * *	Case No. LACV055970 FINAL JURY INSTRUCTIONS
--	--------------------------------------	---

STATEMENT OF THE CASE:

Members of the Jury:

In this case Plaintiffs, Mark Vagts, Joan Vagts, Andrew Vagts and Vagts Dairy, LLC ("Vagts"), claim that Defendant, Northern Natural Gas Company, created a legal nuisance on the Vagts' farm, and that the nuisance caused them damages.

Northern Natural Gas Company denies it created a nuisance and denies it caused damages to the Vagts.

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

INSTRUCTION NO. 1

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

INSTRUCTION NO. 2

Whenever a party must prove something, they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 3

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

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g., answers to interrogatories, matters which judicial notice was taken, and etc.).

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

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

The following are not evidence:

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

INSTRUCTION NO. 4

Certain Testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 5

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

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

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

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 6

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

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

INSTRUCTION NO. 7

Expert witnesses were 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. 8

You have heard evidence claiming a party or parties made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

INSTRUCTION NO. 9

You have heard evidence claiming witnesses made statements before this trial while under oath which were inconsistent with what the witness said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe the witness. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

INSTRUCTION NO. 10

The fact that Vagts Dairy LLC and Northern Natural Gas Company are corporations should not affect your decision. All persons 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. 11

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them and may be inaccurate or incomplete.

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

INSTRUCTION NO. 12

A "nuisance" is whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as to unreasonably interfere with the comfortable enjoyment of life or property. It is a non-trespassory invasion of another's interest in the private use and enjoyment of land. A private use is a use of land that a person is privileged to make as an owner. The existence of a nuisance does not depend on the intention of the party creating it. A condition resulting from lawfully conducted business may constitute a nuisance.

An interest in the use and enjoyment of land is not only the interests that a person may have in the actual use of land for residential, agricultural, commercial, industrial and other purposes, but also the person's interests in having the use of the land unimpaired by changes in its physical condition. Interest in use and enjoyment of land also includes the pleasure, comfort and enjoyment that a person normally derives from the occupancy of land but does not include emotional distress. A physical condition is a condition that may be seen, heard, felt, or otherwise perceived by the senses.

One creating a nuisance is subject to liability if: (1) the nuisance is a proximate cause of damages to another whose interest in the private use and enjoyment of land is invaded, (2) the invasion is unreasonable and (3) the degree of harm is significant under the circumstances.

A nuisance is a "proximate cause" of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct. "Substantial" means the nuisance has such an effect in producing damage as to lead a reasonable person to regard it as a cause. There can be more than one proximate cause of damage.

In determining whether an invasion is "unreasonable" you shall consider:

- (a) the extent of the harm involved;
- (b) the character of the harm involved;
- (c) the type of use or enjoyment invaded;
- (d) the suitability of the particular use or enjoyment invaded to the character of the locality;
- (e) the burden on the person harmed of avoiding the harm;
- (f) the historic use of the land and whether that use precedes the nuisance;
- (g) the suitability of the invading conduct to the character of the locality; and,
- (h) the reasonableness of conducting the defendant's business in the manner, at the place and under the circumstances in question.

The degree of harm is "significant" if normal persons in the community would regard the invasion as definitely offensive, seriously annoying or intolerable. If normal persons in the community would not regard the invasion as such, the invasion is not a significant one, even though the idiosyncrasies of the Vagts may make it unendurable to them.

An owner can recover damages for loss of use and enjoyment of the land, economic damages, and damages for personal inconvenience, annoyance and discomfort caused by a nuisance.

INSTRUCTION NO. 13

Plaintiffs, Mark Vagts, Joan Vagts, Andrew Vagts and Vagts Dairy, LLC, claim the Defendant, Northern Natural Gas Company, created a nuisance by stray voltage introduced on their farm.

Nuisance is explained to you in another instruction.

The Vagts must prove all of the following propositions:

1. Northern Natural Gas Company created a nuisance on Vagts ' farm.
2. The nuisance was a proximate cause of damages to Vagts.
3. The invasion was unreasonable.
4. The degree of harm was significant.
5. The amount of damage.

If Vagts have failed to prove any of these propositions, they are not entitled to damages. If they have proven all of these propositions, they are entitled to recover in some amount.

INSTRUCTION NO. 14

If you find Mark Vagts, Joan Vagts, Andrew Vagts and Vagts Dairy, LLC are entitled to recover damages, you shall consider the following items:

- a. Loss of private use and enjoyment of the land, if any, sustained by Vagts after March 12, 2016 through January 30, 2023.
- b. Economic damages, if any, sustained by Vagts after March 12, 2016 through January 30, 2023. The amount to be awarded by you for economic loss is to be calculated by determining the difference between what Vagts' financial condition would have been without the nuisance compared to what it was with the nuisance. Such economic losses may include, but are not limited to, milk loss, stock loss, capital losses and additional costs caused by the nuisance. These losses should be reduced by any cost savings which may have occurred because of the nuisance.
- c. Damages for personal inconvenience, annoyance and discomfort sustained by Vagts after March 12, 2016 through January 30, 2023.

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

Evidence has been introduced that damages complained of by the Vagts s could have been reduced to some extent if the Vagts had followed certain procedures. If at reasonable expense and without unreasonable inconvenience the Vagts, by exercising ordinary care could have reduced their damages, they have a duty to do so.

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

INSTRUCTION NO. 15

Vagts' damages, if any, are limited to those sustained within the five (5) year period prior to filing this lawsuit. This limitation is imposed by a Statute of Limitations.

A Statute of Limitations is a law which requires a plaintiff to file a lawsuit on a claim before a specified deadline passes. For a nuisance condition that is continuous, damages may be recurring. In such circumstance damages may be recovered only for the period of time not barred by the statute of limitations.

The Iowa Statute of Limitations for injuries to property requires that a lawsuit for private nuisance must be filed with the Clerk of District Court within five (5) years after the date on which the damages occurred and the plaintiff knew or should have known that the nuisance was causing the damages. The law requires that the plaintiffs know sufficient facts to put a person of ordinary intelligence on notice that he or she should investigate the injury or problem and discover the cause and source of their damages.

The Plaintiffs, Mark Vagts, Joan Vagts, Andrew Vagts and Vagts Dairy, LLC, may recover damages for only such losses, if any, as were sustained after March 12, 2016.

INSTRUCTION NO. 16

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. 17

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved, and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. 18

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually, questions about instructions can be answered by carefully re-reading them.

If it is necessary to ask a question, you must do so in writing and deliver the question to the court attendant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes time and deliberation before I can reply. The foreperson shall read my response to the jury. Keep the written question and response and return it to the Court with the verdict.

The court attendant who has been working with me on this case is in the same position as I am. She has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put her on the spot by asking her any questions. You should direct your questions to the Court and not to the court attendant.

INSTRUCTION NO. 19

I am giving you 1 verdict forms and questions. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict and answers to questions must be signed by your foreman or forewoman.

After deliberating for six hours from ^{2:05} _____ o'clock P.m. excluding meals or recesses outside your jury room, then it is necessary that only eight of you agree upon the answers to the questions. In that case, the verdict and questions must be signed by all eight jurors who agree.

When you have agreed upon the verdict and answers to questions and appropriately signed it, tell the Court Attendant.