

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

CIVIL DIVISION

ELROY FUDD,

Plaintiff,

v.

CASKETS-R-US, INC.,

Defendant.

)
)
) Case No. 02-1965
)
)
)
)
)
)

Prepared by:

**Tracy E. Leduc
Second District Court of Appeal
1005 E. Memorial Blvd.
Lakeland FL 33802**

Copyright 2003
Texas Young Lawyers Association
-and-
Tracy E. Leduc

ALL RIGHTS RESERVED

This case file was commissioned by the Texas Young Lawyers Association and prepared by Tracy E. Leduc for the 2004 National Trial Competition.

ELROY FUDD

v.

CASKETS-R-US, INC.

TABLE OF CONTENTS

Statement of the Case	-1-
Stipulations Regarding Evidentiary Matters	-1-
Witness List	-6-
Complaint	-7-
Answer and Defenses to Complaint	-11-
Deposition of Elroy Fudd	-14-
Deposition of B.J. Bell	-20-
Deposition of Paul Bearer	-26-
Deposition of M.J. McGrady	-30-
Exhibit A	-33-
Exhibit B	-36-
Exhibit C	-37-
Exhibit D	-38-
Exhibit E	-39-
Preliminary Jury Instructions	-40-
Final Jury Instructions	-42-
Verdict Form	-46-

STATEMENT OF THE CASE

Elroy Fudd has filed a complaint against Caskets-R-Us, Inc., a corporation incorporated in and with its principal place of business in the State of Lone Star. The complaint alleges that Fudd purchased a casket made by Caskets-R-Us on April 25, 2002, for his grandmother's funeral to be held that weekend. The complaint alleges that Caskets-R-Us is strictly liable to Fudd because it placed into the stream of commerce a casket that failed to perform as safely as the ordinary consumer would expect when used in its intended manner in that the casket handle fell off while the casket was being carried from the hearse to the grave site. The complaint also alleges that Caskets-R-Us breached the implied warranty of merchantability when it sold a casket that was not reasonably fit for its intended use. When the handle fell off, the pall bearers dropped the casket, it came open, and Fudd's grandmother fell from the casket and rolled to the bottom of the hill. This resulted in severe emotional distress to Fudd.

Caskets-R-Us has filed an answer denying the allegations of the complaint and raising the affirmative defenses of comparative negligence and negligence of others not parties to this action.

STIPULATIONS REGARDING EVIDENTIARY MATTERS

Procedural Matters

1. Federal Rules of Civil Procedure and Federal Rules of Evidence apply.
2. This case shall be tried on liability only. Should the plaintiff prevail on liability, the question of damages shall be heard by the jury with additional evidence and additional jury instructions at a later date.

3. All witnesses called to testify who have in depositions identified the parties, other individuals, or tangible evidence can, if asked, identify the same at trial.

4. Each witness who gave a deposition did agree under oath at the outset of his/her deposition to give a full and complete description of what occurred and to correct the deposition for inaccuracies and completeness before signing the deposition.

5. All depositions were signed under oath.

6. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury that a signature appearing on the deposition does not comport with signatures or initials located on an exhibit.

7. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.

8. This competition does not permit a listed witness, while testifying, to "invent" an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that "invented" individual.

9. "Beyond the record" shall not be entertained as an objection. Rather, teams shall use cross-examination as to inferences from material facts pursuant to National Rules VII(4)(C) and (D) and VIII(5). Any party wishing to file a complaint concerning a violation of this rule shall use the procedure found in rule VIII(3).

10. Each party must call the two witnesses listed as that party's witnesses on the witness list.

11. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.

12. It is stipulated that no one shall attempt to contact the problem drafter, Tracy Leduc, about this problem. Contact with the competition officials concerning this problem must be pursuant to the rules of the competition.

13. 2004 should be the current year in which this case comes to trial.

14. Presentation and argument on pretrial motions shall be limited to a total time of sixteen minutes divided equally between the parties as follows: (1) the plaintiff shall have four minutes to present any pretrial motions; (2) the defendant shall have four minutes to respond to the plaintiff's motion(s); (3) the defendant shall have four minutes to present any pretrial motions; and (4) the plaintiff shall have four minutes to respond to the defendant's motion(s).

15. This competition permits teams to argue additional case law and other relevant authority to support the team's argument on motions and evidentiary issues. However, no additions or deletions are permitted to the provided jury instructions.

16. No team member is permitted to question any witness or argue to the jury the absence of photographs of the actual casket purchased, the absence of photographs of the hearse, or the absence of the film clips of the television interviews presented at trial.

Substantive Matters

1. In the State of Lone Star, actions at law in circuit court require that the controversy exceed the sum of \$15,000, exclusive of interest, costs, and attorney's fees.

Caskets-R-Us stipulates for purposes of the liability portion of this trial that Fudd's psychiatric and psychological expenses exceed \$15,000.

2. Motions to dismiss the complaint and motions for summary judgment have been denied by the trial court, and no further motions to dismiss or for summary judgment shall be argued or heard by the trial judge.

3. The State of Lone Star is a comparative negligence state. The jury shall apportion the percentage of negligence, if any, to the plaintiff, the defendant, and any nonparty alleged by the defendant in its affirmative defenses as being responsible for the injuries.

4. In the case of Baker v. Menendez, 606 Lone Star 727 (Lone Star 1996), the Lone Star Supreme Court held that a jury is permitted to consider the liability of a nonparty in addition to the liability of all parties if the defendant has specifically named a nonparty in its affirmative defenses, has alleged how the nonparty caused or contributed to the plaintiff's injuries, and has offered evidence to the jury from which a jury could find negligence on the part of the nonparty.

5. In the case of Zimmerman v. Remington, 436 Lone Star 649 (Lone Star 1987), the Lone Star Supreme Court abolished the "impact rule," which had previously prohibited claims for mental distress or psychiatric injury in the absence of a discernable physical injury or illness or an actual impact. In doing so, the court stated:

We believe that the traditional foreseeability analysis applicable to negligence claims is the more appropriate framework for a limitation on tort recovery in this State. . . . It seems reasonable to entrust Lone Star juries, which are routinely asked to determine pain and suffering when an emotional injury is accompanied by a physical injury, to

determine fault and damages surrounding claims of purely mental injuries.

6. In the case of Villanti v. Wallace, 398 Lone Star 772 (Lone Star 1981), the Lone Star Supreme Court, in discussing the jury instructions concerning products liability, stated that "the terms defective and unreasonably dangerous are redundant. Thus a plaintiff is not required to prove that a product is both defective and unreasonably dangerous."

7. The plaintiff and defendant stipulate that their respective experts examined the casket used for Myra Fudd, and each determined that the casket was manufactured in compliance with the design and manufacturing standards set forth by Caskets-R-Us. Thus there was no manufacturing defect in the casket. This stipulation may be read to the jury at the request of either the plaintiff or the defendant.

WITNESS LIST

Witnesses for the Plaintiff:

- | | | | |
|----|------------|---|------------|
| 1. | Elroy Fudd | - | Plaintiff* |
| 2. | B.J. Bell | - | Witness** |

Witnesses for the Defendant:

- | | | | |
|----|--------------|---|------------|
| 1. | M.J. McGrady | - | Witness** |
| 2. | Paul Bearer | - | Defendant* |

Each team must call witnesses number 1 and 2 listed on its respective witness list.

* This person must be a male.

** This person may be a male or a female. A male or female first name may be substituted for their first initial.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

CIVIL DIVISION

ELROY FUDD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 02-1965
	)	
CASKETS-R-US, INC.,	)	
	)	
Defendant.	)	
_____	)	

COMPLAINT

Plaintiff Elroy Fudd sues defendant Caskets-R-Us, Inc. and alleges:

GENERAL ALLEGATIONS

1. This is an action for damages that exceed \$15,000.
2. Plaintiff has been a resident of Travis County, State of Lone Star, since 1973.
3. Defendant Caskets-R-Us, Inc. is incorporated in the State of Lone Star and has its principal place of business in Travis County, State of Lone Star.
4. Myra Fudd, Plaintiff's grandmother, died on April 24, 2002.
5. On April 25, 2002, Plaintiff went to Bell's Funeral Home in Flagstown, Travis County, State of Lone Star, to purchase a casket in which Myra Fudd would be buried.

6. At the funeral home, Plaintiff spoke with B.J. Bell, the owner of Bell's Funeral Home. Plaintiff explained to Bell that he needed to purchase a casket for his grandmother, but that he needed to do so as economically as possible.

7. Bell showed Plaintiff sales literature concerning various lines of caskets in various price ranges. Plaintiff ultimately elected to purchase the "Golden Finished Pine" model manufactured by Defendant Caskets-R-Us.

8. Bell and/or Bell's agents or employees placed Myra Fudd in Defendant's "Golden Finished Pine" model casket at the funeral home.

9. After the funeral service, Bell and/or Bell's agents or employees loaded the casket into the hearse and transported Myra Fudd in Defendant's "Golden Finished Pine" model casket to the cemetery for the graveside service.

10. As Bell and/or Bell's agents or employees were carrying the casket up a small hill to Myra Fudd's gravesite, one of the handles fell off Defendant's "Golden Finished Pine" model casket, causing the casket to fall to the ground. When the casket fell, the lid came open and Myra Fudd's body was ejected from the casket. She rolled down the hill, coming to rest near the hearse.

11. Because of this incident, the graveside service had to be moved to the bottom of the hill. Myra Fudd was subsequently buried by cemetery employees.

12. Plaintiff, various members of Plaintiff's family, various friends of both Plaintiff and Myra Fudd, and numerous onlookers witnessed Myra Fudd's body being ejected from the casket and rolling down the hill.

13. As a result of this incident, Plaintiff has suffered, and continues to suffer, severe emotional distress, which has required treatment by psychologists, hypnotists, and other medical professionals.

COUNT I-STRICT LIABILITY

14. Plaintiff adopts and reaffirms the allegations of paragraphs 1 through 13 as if fully restated herein.

15. Defendant Caskets-R-Us designed the "Golden Finished Pine" model casket for sale to the public.

16. Defendant Caskets-R-Us's design of the "Golden Finished Pine" model casket was defective in that the casket failed to perform as an ordinary consumer would expect when used as intended because the handles were not designed to support the weight of both the casket and the deceased's body.

17. Defendant Caskets-R-Us manufactured and sold its "Golden Finished Pine" model casket knowing that such casket would be used without inspection for defects and without any substantial change affecting its design.

18. As a direct and proximate result of this defect, Plaintiff has suffered severe and ongoing emotional distress and has incurred bills for psychological care and treatment.

WHEREFORE Plaintiff Elroy Fudd demands judgment for damages, including punitive damages, against Defendant Caskets-R-Us and demands a trial by jury.

COUNT II-BREACH OF WARRANTY

19. Plaintiff adopts and reaffirms the allegations of paragraphs 1 through 13 as if fully restated herein.

20. By placing the casket into the stream of commerce, Defendant Caskets-R-Us impliedly warranted that the casket was reasonably fit for the used intended or reasonably foreseeable by Defendant Caskets-R-Us.

21. The casket manufactured by Defendant Caskets-R-Us was defective when it left the possession of Defendant Caskets-R-Us because the handles with which the casket was to be carried would not support the weight of the casket and the deceased.

22. Defendant Caskets-R-Us intended and could reasonably foresee that the handles it provided would be used to carry the casket with the deceased inside.

23. As a direct and proximate result of Defendant Caskets-R-Us's breach of this implied warranty, Plaintiff has suffered severe and ongoing emotional distress and has incurred bills for psychological care and treatment.

WHEREFORE Plaintiff Elroy Fudd demands judgment for damages, including punitive damages, against Defendant Caskets-R-Us and demands a trial by jury.



Alan Blizard, Esq.
8212 Peterson Road
Flagstown, State of Lone Star 74010
(813) 555-1211
Lone Star Bar No. 26265
Attorney for Plaintiff Elroy Fudd

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

CIVIL DIVISION

ELROY FUDD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 02-1965
	)	
CASKETS-R-US, INC.,	)	
	)	
Defendant.	)	
_____	)	

ANSWER AND DEFENSES TO COMPLAINT

Defendant Caskets-R-Us, Inc., by and through its undersigned attorney, files this,
its Answer and Defenses to Complaint filed by Plaintiff and states as follows:

1. Admit for jurisdictional purposes only.
2. Without knowledge; therefore deny.
3. Admit.
4. Without knowledge; therefore deny.
5. Without knowledge; therefore deny.
6. Without knowledge; therefore deny.
7. Admit that Defendant Caskets-R-Us makes a casket marketed as the
"Golden Finished Pine" model. Otherwise without knowledge; therefore deny.
8. Without knowledge; therefore deny.
9. Without knowledge; therefore deny.

10. Without knowledge; therefore deny.
11. Without knowledge; therefore deny.
12. Without knowledge; therefore deny.
13. Deny and demand strict proof thereof.
14. Defendant Caskets-R-Us realleges its answers to paragraphs 1 through 13 as if fully set forth herein.
15. Admit.
16. Deny and demand strict proof thereof.
17. Deny and demand strict proof thereof.
18. Deny and demand strict proof thereof.
19. Defendant Caskets-R-Us realleges its answers to paragraphs 1 through 13 as if fully set forth herein.
20. Admit.
21. Deny and demand strict proof thereof.
22. Admit.
23. Deny and demand strict proof thereof.

AFFIRMATIVE DEFENSES

Defendant Caskets-R-Us, Inc., by and through its undersigned counsel, asserts the following affirmative defenses to Plaintiff's Complaint.

First Affirmative Defense

That on the date, time, and place set forth in the Complaint, Plaintiff Elroy Fudd contributed to his own injuries by negligently failing to inform B.J. Bell that Myra Fudd weighed in excess of 425 pounds.

Second Affirmative Defense

That on the date, time, and place set forth in the Complaint, the following person(s) contributed to the injury suffered by Plaintiff Elroy Fudd:

1. Bell's Funeral Home, through its agents and employees, was negligent for failing to question Elroy Fudd concerning Myra Fudd's weight when Elroy Fudd indicated that Myra Fudd was "heavysset." Bell's Funeral Home, through its agents and employees, was also negligent for selling Elroy Fudd a casket neither designed nor intended to be used to hold a 425-pound body.
2. Bell's Funeral Home, through its agents or employees, was negligent by hitting the handle of the casket against the back of the hearse while attempting to load the casket into the back of the hearse. In addition, Bell's Funeral Home, through its agents or employees, was negligent by bouncing the casket up and down while carrying it, thus putting undue and unanticipated strain on the handle.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Answer and Defenses to Complaint has been furnished by U.S. Mail to Alan Blizzard, Esq., 8212 Peterson Road, Flagstown, State of Lone Star 74010 on this 3 day of MAY, 2003.

Christine Swahn

Christine Swahn, Esq.
6734 Liberty Lane
Flagstown, State of Lone Star 74010
(813) 555-1758
Lone Star Bar No. 119210
Attorney for Defendant

DEPOSITION OF ELROY FUDD

Q. Please state your name.

A. My name is Elroy Fudd.

Q. What is your address?

A. 7911 Looney Lane, Flagstown, State of Lone Star.

Q. Does anyone else live with you?

A. Just my dog, Buster.

Q. Are you employed?

A. Not at this time.

Q. When were you last employed?

A. I was last employed in April 2002.

Q. What did you do then?

A. I worked for a company called Icemakers. We made ice and delivered it in various size bags to convenience stores throughout Travis County.

Q. What did you do for Icemakers?

A. I was a delivery driver. I had a scheduled route, and I would deliver bagged ice to the stores on my route.

Q. Why did you stop working for Icemakers?

A. After my grandmother's funeral, I just could not work anymore. I could not face people. I knew they were all laughing behind my back.

Q. Why would people be laughing?

A. Well, after the funeral, the media got a hold of the story. There were lots of reports on TV about what had happened. I did an interview with one station, thinking they were going to do a story about how bad the casket company was. Instead, I was used as an example of what not to do. One of the television

stations even filmed a reenactment of the incident. I knew that everyone on my route had seen these stories and would know what had happened and would laugh, partly at me and partly at the situation.

Q. Speaking of the incident, why don't we turn to that. How did you come to be at Bell's Funeral Home?

A. My grandmother, who raised me after my mama ran away, had been sick. She died on April 24, 2002. She had a plot next to my grandfather at the Flagstown Cemetery, but she had not done anything else about a funeral. So, I went to Bell's Funeral Home to make the arrangements.

Q. Why did you choose Bell's Funeral Home?

A. I don't know anything about funerals or funeral homes. My cousin's ex-wife's sister had gone to school with B.J. Bell and recommended that I go to Bell's Funeral Home. I didn't know of any reason not to go there.

Q. What happened when you arrived?

A. I met with B.J. Bell. I told B.J. that I did not have a lot of money and that my grandmother did not have any money, but that I needed to have a nice funeral. B.J. showed me some pieces of paper with different caskets on them and told me about the different features.

Q. I'm showing you what has been marked as Exhibit A. Can you identify it?

A. It looks like the pages that B.J. showed me with the different caskets. I can't say for sure that the prices are the same, but the pictures look the same.

Q. Did you select a casket from these pages?

A. I don't know if it was specifically on these pages, but I did pick out a casket.

Q. Can you describe the casket?

A. Well, I mean, it was just a casket. I remember that it was pine. It was pretty plain because I could not afford much. But it was nice. It was cushioned inside. I paid \$1199 for it plus tax.

Q. I am showing you what has been marked as Exhibit B. Can you identify it?

A. Yes, it is the sales receipt for the casket that I bought from Bell's Funeral Home.

- Q. Is that your signature at the bottom where it says "customer"?
- A. Yes.
- Q. I am showing you what has been marked as Exhibit C. Can you identify it?
- A. I'm not sure. It looks like a picture of the casket I bought, but I don't remember seeing this particular picture before.
- Q. Do you know who made the casket you bought?
- A. I did not know when I bought it. I never even thought about anything like that. But I learned after this happened that it was made by Caskets-R-Us.
- Q. Going back to when you were at Bell's Funeral Home, did B.J. Bell ask you any questions about your grandmother before selling you the casket?
- A. Not that I recall. I think I mentioned in passing that she was heavysset because I wanted to be sure that she would fit in the casket and be comfortable. But B.J. did not ask about anything other than what I could afford.
- Q. What happened the day of the funeral?
- A. I got to the funeral home before the service. My grandmother was in the casket, and she looked real nice. They had done her up. She looked better than she did when she was alive. Anyway, everything was fine at the service. Then we were taking her to the gravesite for another service with just family and friends.
- Q. What happened at the gravesite?
- A. Well, I got there before the hearse. We were all waiting by the grave, which was up a small hill from the road where the hearse was. The pall bearers were all people from the funeral home. Anyway, as they were walking up the hill with the casket, the handle on the left side of the casket just broke off. When the handle broke, the casket tipped and fell to the ground. The top came open, and my grandmother came out. She rolled down the hill and ended up at the bottom by the hearse.
- Q. What happened then?
- A. Well, of course, we were all shocked and upset. My great-aunt Thelma was screaming. We did not know what to do. There were people driving past on their

way to another grave, and they appeared stunned. I was horrified that this would happen to my grandmother. It was humiliating.

Q. Did you have the service?

A. Well, the people from Bell's Funeral Home got the casket to the bottom of the hill and got my grandmother back in it. But they could not get the casket up the hill without the handle. So we had to have the graveside service down at the bottom of the hill by the hearse. After the service, someone from the cemetery got a forklift and got the casket up the hill and they buried her.

Q. Did you see anyone hit the casket against the hearse?

A. No.

Q. Did you see anyone bouncing the casket?

A. No.

Q. What happened next?

A. Well, nothing else happened with my grandmother. When I talked to B.J. the next week about what happened, B.J. told me that Caskets-R-Us was denying that they were responsible for this. Apparently, they are claiming that B.J. should not have used this casket because it was not made for someone who weighed as much as my grandmother. But I think Caskets-R-Us just did not want the bad publicity.

Q. How much did your grandmother weigh when she died?

A. She was heavysset - about 425 pounds.

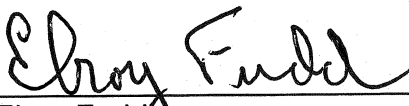
Q. What injuries have you suffered as a result of this?

A. Well, I had to quit my job because I could not face anyone anymore. I cannot leave the house because I know that people are laughing at me. I could not sleep because I kept picturing my grandmother rolling down the hill. I could not eat. When I did go to the store, I would drive to the next town to avoid seeing people who knew what had happened. I finally started seeing a psychologist because I was just falling apart.

Q. What has the psychologist done for you?

- A. We have talked a lot about the fact that I am dealing with this while also dealing with the loss of the woman who raised me. He says that I am depressed and that I need to continue treatment. I have been able to do some things again, like going shopping here in Flagstown, but I cannot face trying to go back to work. I just know that people are going to ask about this once they recognize who I am.
- Q. Are you on any medication for this?
- A. My regular doctor gave me sleeping pills and some pills for depression, but I don't like to take them.
- Q. Why not?
- A. Well, I just feel like I ought to be able to deal with this without drugs. When I was younger, I did a lot of drugs. I was in prison for a while for making methamphetamine and dealing it out of my house. Once I got clean, I did not want to take any drugs any more.
- Q. Have you ever been convicted of a felony?
- A. Yes, five times.
- Q. What were those convictions for?
- A. Two convictions were for making and dealing methamphetamine. One was for grand theft and another for burglary from when I broke into a house and stole a lot of stuff. Those were in 1996. The last one was for filing a fraudulent insurance claim in late 1993 or early 1994 - I can't remember exactly. But my last conviction was in 1997, and I haven't been in trouble with the law since I got clean from drugs.
- Q. Did you sue Bell's Funeral Home or B.J. Bell because of the problem with the casket?
- A. No.
- Q. Why not?
- A. Well, as I said, B.J. is a friend of a friend. It's not B.J.'s fault that the casket wasn't made right.
- Q. Why did you sue Caskets-R-Us?

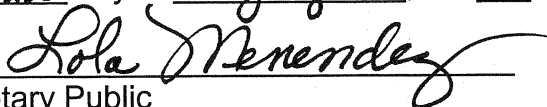
- A. Well, what they did was horrible. It's not bad enough that somebody died, but then they sell shoddy caskets. I think they should pay. I was humiliated. People are laughing at me to this day. Since I have not been able to work, I have built up a lot of debt, and it is their fault. I have a \$250,000 fine to have to pay because of my drug conviction, and I can't pay that if I am not working. Plus I have been paying to see my psychologist. I even saw a hypnotist a couple of times. I know Caskets-R-Us has insurance, and I think I should get some of it for what they did. You would want the same thing if it happened to you.



Elroy Fudd

Sworn to and subscribed before me this

2nd day of July, 2003.



Notary Public

DEPOSITION OF B.J. BELL

Q. Please state your name.

A. B.J. Bell.

Q. How are you employed?

A. I am the owner and operator of Bell's Funeral Home.

Q. How long have you owned Bell's Funeral Home?

A. My family has owned it since 1965. I have been running it since 1986.

Q. During the time that you have been running Bell's Funeral Home, have you had occasion to work with Caskets-R-Us?

A. Yes, they have been one of our casket suppliers since 1993.

Q. Since 1993, have you ever had any problems with any of their caskets?

A. What do you mean by problems?

Q. Have you been dissatisfied with any of their caskets?

A. Not until this incident. They are very well known within the industry, and they have a very good reputation. That is why I was so surprised when this happened.

Q. Since 1993 when you first began working with Caskets-R-Us, have you seen any product literature from them?

A. Yes, we get various materials from them from time to time.

Q. Can you describe the types of materials you get?

A. Usually they are pages with pictures of the various caskets that they are selling. We have some samples in our showroom, but most of our selling is from the product sheets.

Q. I am showing you what has been marked as Exhibit A. Do you recognize this?

A. Yes, it is one of the marketing sheets that we received from Caskets-R-Us.

Q. Do you recall receiving any other materials from Caskets-R-Us?

- A. Well, I know that we have gotten a lot of materials from them over the years. We get updated sheets from them when they put out new lines or discontinue certain caskets. I would say we get various sales type documents from them every few months.
- Q. Do you review those materials when you receive them?
- A. Usually I review them to see what has changed. I will admit that I do not always go through them carefully. I usually just skim them to see what has changed.
- Q. I am showing you what has been marked as Exhibit D. Do you recall receiving specification sheets like this from Caskets-R-Us along with their product literature?
- A. I cannot say that I have not received any specification pages like this, but I do not recall this exact one.
- Q. If you had received a sheet like Exhibit D, what would you have done with it?
- A. I probably would have filed it along with the other product literature that we get.
- Q. Would you have read it?
- A. Probably not in much detail.
- Q. Turning to the events of April 2002, do you recall when Mr. Fudd came to see you?
- A. Yes. He came in on April 25, 2002. He told me that his grandmother had died and that he needed a casket for her. He also engaged us to hold the memorial service.
- Q. Did you sell Mr. Fudd a casket?
- A. Yes. He told me that they did not have a lot of money. Apparently, Mr. Fudd's grandmother spent what little savings she had gambling on bingo, and Mr. Fudd had been in prison for dealing meth so there was not a lot of money. But Mr. Fudd wanted a casket that looked nice because of the service. He had a lot of family and friends coming to the service, and he wanted to make a good impression.
- Q. How did he come to select the casket?
- A. Well, Caskets-R-Us has what they call their "Exceptional Value Line." These are good quality caskets, but they are cheaper because the materials are of lesser

quality, and they do not have all the features that a higher-end casket would have. I recall showing Mr. Fudd some of the product literature from the "Exceptional Value Line," and he liked the "Golden Finished Pine" model. It was at the top of his price range, but he decided on that one.

Q. Did you ask Mr. Fudd any questions about the deceased?

A. Well, we in the industry try not to pry too much. We did ask whether it would be an open or closed casket. We also ask about the service itself. As far as asking about the deceased, I recall asking Mr. Fudd to bring us the clothing and accessories that he would like his grandmother buried in. I did not ask anything else.

Q. Did Mr. Fudd offer you any information about his grandmother?

A. Well, he did not say much other than to mention her gambling habit. At one point, he asked about the make-up that we use because he wanted her to look nice while the casket was open. He also mentioned something about her being heavysset. But I do not recall anything else.

Q. When Mr. Fudd mentioned that his grandmother was heavysset, did that prompt you to ask any other questions?

A. No. People come in all shapes and sizes.

Q. So you never asked how much Myra Fudd weighed before you sold Mr. Fudd the casket?

A. No.

Q. Did you know that Caskets-R-Us made a special line of caskets for bigger people?

A. I know that now. I don't recall knowing it then.

Q. When did you receive the body?

A. We received the body on Friday, April 26.

Q. What did you do at that point?

A. Well, my staff began preparing the body for burial. There are a number of steps in that process.

Q. Were you surprised at how heavy Myra Fudd was?

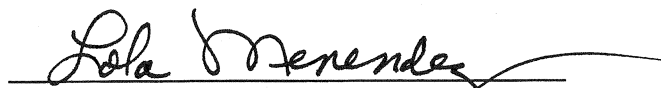
- A. Well, we learned when she came in that she weighed about 425 pounds. We were concerned that she might not fit in the casket Mr. Fudd had selected. But we got her into the casket. It was a tight fit, but she fit.
- Q. Did you have any concerns at that point about the ability of the casket to support Myra Fudd's weight?
- A. No. I believe that if the deceased physically fits in the casket, the casket should be designed to support that weight.
- Q. Did you ever look at any of the product literature to see whether the casket would support 425 pounds?
- A. No.
- Q. Can you please look at Exhibit D and see whether it says anything about weight?
- A. Well, it does say that Caskets-R-Us makes a special line of caskets for very tall and/or very heavy bodies. It also seems to indicate that the "Golden Finished Pine" model should not be used for bodies over 425 pounds.
- Q. If you had read this before meeting with Mr. Fudd, would you have sold him the same casket?
- A. I don't know.
- Q. Did you have any problems with Myra Fudd in the casket at the funeral home?
- A. No.
- Q. Did you have problems getting the casket from the funeral home into the hearse?
- A. No.
- Q. When was the first sign of a problem?
- A. At the graveyard. I was not there, but from what I have been told, as the pall bearers were carrying the casket up a small hill, one of the handles fell off. This caused the casket to fall. The lid came open, and Ms. Fudd fell out of the casket. Needless to say, this was very traumatic for the family.
- Q. Some people who were at the funeral home have said that the pall bearers hit the handle of the casket on the back of the hearse as they were loading the casket into the hearse. Do you know anything about this?

- A. No, that did not happen. I was supervising the loading of the casket into the hearse, and I did not see the handle hit the hearse.
- Q. Could this have happened when you were not watching?
- A. No, I was watching the entire time.
- Q. I'm showing you what has been marked as Exhibit E. Do you recognize this?
- A. Yes, it is a repair receipt for Bell's Funeral Home's hearse.
- Q. Is this your signature on the bottom of the receipt?
- A. Yes.
- Q. Why were these repairs needed?
- A. One of my employees had backed the hearse into something and damaged the back of the hearse by the tailgate.
- Q. When did that happen?
- A. I don't recall exactly. Probably the middle of April.
- Q. Did this repair receipt have anything to do with anything that happened at the Fudd funeral?
- A. No.
- Q. What do you think caused this to happen?
- A. Well, I think the casket was simply poorly designed. If the casket will physically hold the deceased, it ought to be designed so that the handles will support the weight of the deceased.
- Q. Do you believe that the casket was mishandled in any way?
- A. I did not see that. I heard on the news that one of the mourners said that one of the pall bearers had started to lose his grip on the handle and had bounced the casket up a little as if to get a better grip. I guess the bouncing could have caused a problem. But I think it was just poorly designed.
- Q. Did you make any kind of claim with Caskets-R-Us?

- A. Yes. My secretary called them the day after the funeral and told them what had happened. We asked them to provide us with a refund on the casket because we had had to provide another one for Myra Fudd.
- Q. Did Caskets-R-Us issue you a refund?
- A. Yes.
- Q. Have you ever had any problems like this with any casket in the past?
- A. Well, about six years ago, we had a handle break on a Caskets-R-Us casket at the funeral home. It broke off when we were carrying the casket from the mortuary area to the area where the services are held. We just used another casket, so the family did not know. We called Caskets-R-Us, and they credited us with the cost of the casket. Other than that, we have not had any problems.
- Q. So when you said earlier that you had not had any problems with Caskets-R-Us, was that a mistake on your part?
- A. No, I would not say so. I believe that I said that I was not dissatisfied with their products before this. The earlier problem was resolved to my satisfaction, and I believed that it was a fluke. I did not realize that this might be an ongoing problem with caskets from Caskets-R-Us.
- Q. Were you involved in any of the media coverage of this event?
- A. Well, we certainly were available to the media. We have tried to make sure that the media accurately reports the fact that this was not our fault but was the fault of Caskets-R-Us and its defective product. We do not want to see our reputation, or that of our employees, maligned.


B.J. Bell

Sworn to and subscribed before me this
8th day of July, 2003.


Notary Public

DEPOSITION OF PAUL BEARER

Q. Please state your name for the record.

A. Paul Bearer.

Q. Mr. Bearer, how are you employed?

A. I am president and CEO of Caskets-R-Us, Inc.

Q. How long has Caskets-R-Us been in business?

A. Caskets-R-Us has been in business for over forty years. I have been president and CEO since 1990.

Q. What types of products does Caskets-R-Us make?

A. We make an entire line of caskets and other funeral and burial needs. We make a wide range of products, from the low end to the high end. We try to accommodate the needs of everyone who is faced with having to bury a loved one.

Q. Where is Caskets-R-Us located?

A. Our headquarters are here in Flagstown. We also have a plant here. Between the headquarters and the plant, we employ approximately 250 residents of Travis County. We have three other plants throughout the State of Lone Star, and numerous other plants nationwide. Our sales force works throughout the United States, although most of our business comes from the southeast United States.

Q. How does Caskets-R-Us market its products?

A. We enter into sales agreements with funeral homes. Our sales representatives visit the funeral homes in their territories to encourage the funeral homes to sell our products. We provide them with information about the company and our products. If they agree to sell our products, we also provide them with sales literature that is appropriate for use in selling our products to the families of the deceased.

Q. Mr. Bearer, I am showing you what has been marked as Exhibit D. Do you recognize this?

A. Yes, it is one of our specification sheets on our "Golden Finished Pine" model.

Q. How are these specification sheets developed?

A. When a new casket is initially designed, we create an initial specification sheet based on the design specifications. Once the casket is actually in production, we modify the sheet to reflect the actual specifications based on the manufactured models. The specification sheets on the design models are then destroyed, and the only specification sheets available are those for the manufactured models.

Q. Are these specification sheets created and kept in the regular practice of your business activity?

A. Yes.

Q. How would these specification sheets be used?

A. This sheet is something that our sales representatives would give to the funeral directors or funeral home staff to assist them in selling this particular casket. This is not sales literature that would be shown to the family. Rather, this is something that the funeral home staff should use in determining whether this particular casket is appropriate for the deceased. We believe in providing our funeral home customers with as much information as possible.

Q. How often would a funeral home receive specification sheets like this?

A. Well, our sales representatives would provide them with this when the funeral home first agreed to sell our products. As our product line changes, the funeral home would receive updated specification sheets. In addition, if a funeral home was selling a lot of a particular line or model, we would provide additional sheets on that line or model. Our sales representatives are supposed to visit each funeral home in their territory at least once every two months, so any questions or problems could be addressed at that time.

Q. What type of information is provided on the specification sheets like Exhibit D?

A. Well, as you can see, this includes information concerning the materials used, the dimensions of the casket, the type of seals, the type of lining. Some of these features are important to certain families. Others are less important but are simply practical information for the funeral home.

Q. Do the specification sheets, such as Exhibit D, have a weight limit listed?

A. Not exactly. The information sheet suggests that individuals over a certain height or weight be buried in a different type of casket. In this case, we suggest that individuals over 425 pounds not be buried in the "Golden Finished Pine" model. We do have caskets that are specifically marketed for larger or heavier individuals, just like we have children's caskets available. We have various lines of caskets for various needs, and our sales representatives discuss this with the

funeral directors. We certainly would not recommend that this casket be used for a 425-pound individual.

Q. What do you know about the casket involved in this incident?

A. I know that B.J. Bell sold Mr. Fudd a "Golden Finished Pine" model. This casket is one of the least expensive caskets that we have. It is a good, basic casket, but it is not designed to hold 425 pounds.

Q. Would B.J. Bell have known that this casket would not hold 425 pounds?

A. I don't know what B.J. Bell would or would not have known. I would assume that someone at Bell's Funeral Home would have read the product literature and specification sheets we provided before selling our products. I would also think that common sense would tell you that a standard casket is not going to hold a 425-pound individual.

Q. What do you know about what happened at the Fudd funeral?

A. Well, I was told that the handle of our casket broke off as they were carrying the casket from the hearse to the grave. I was told by someone from the funeral home that a Bell's Funeral Home employee rammed the handle of the casket against the back of the hearse as they were trying to load the casket into the hearse. I also heard that someone was bouncing the casket to get a better grip on the handle.

Q. Who was the person from the funeral home who told you this?

A. I don't recall. I just remember the call from someone at Bell's Funeral Home wanting to make a warranty claim and telling me that this had happened.

Q. Have you had any other incidents involving the handles breaking off caskets?

A. In the past three years, we have had twenty reports of problems with casket handles. This is just based on reports from the funeral homes that have either complained or sought refunds. We do not keep track of what the exact problem is, so I cannot say that the situations were similar to what occurred here.

Q. Did any of the previous reports involve the "Golden Finished Pine" model?

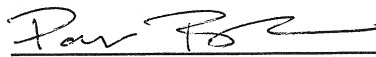
A. Yes. Of the twenty reports, nine of them involved the "Golden Finished Pine" model.

Q. Have you done anything in response to this problem?

A. Well, I would not characterize it as a problem. However, after this incident with Mr. Fudd, we have reinforced the handles and redesigned how the handles attach to the casket on this particular model. We have not had any complaints since that time.

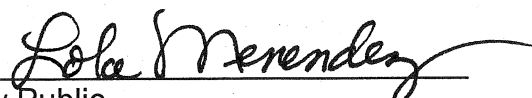
Q. Do you believe that Caskets-R-Us is to blame for this incident?

A. No, I believe Bell's Funeral Home made a poor choice in selling this casket to Mr. Fudd when Mr. Fudd needed a casket from our line for larger individuals. I also believe that Bell's employees damaged the handle when they hit the casket on the back of the hearse. I feel very bad that this incident occurred, but it is not the fault of Caskets-R-Us.



Paul Bearer

Sworn to and subscribed before me this
8th day of July, 2003.


Notary Public

DEPOSITION OF M.J. McGRADY

Q. Please state your name for the record.

A. My name is M.J. McGrady.

Q. How are you employed?

A. I am currently a senior at Lone Star State University majoring in business. To pay for some of my expenses, I play the bagpipe at funerals and other ceremonies.

Q. How long have you been playing the bagpipe?

A. I started taking lessons when I was eight. My father insisted that I honor my heritage by learning.

Q. How do you get business?

A. When I started at Lone Star University, I sent out fliers to churches and funeral homes in Flagstown, along with some of the other venues where various types of ceremonies are held. After I performed at a local wedding, the Flagstown Times called and did a story about me. Since then, I have been busy almost every weekend.

Q. How did you become involved with the Fudd funeral?

A. I have done a lot of work for B.J. Bell. I have fliers at Bell's Funeral Home. I guess Mr. Fudd saw one of my fliers and thought it would be a nice idea. He apparently told B.J. Bell that he wanted me to play. B.J. Bell then called me and asked me to play at both the memorial service and at the gravesite.

Q. While you were at the memorial service, did anything unusual happen?

A. Well, not during the service itself. But as I was getting in my car to drive to the cemetery, I saw them loading the casket into the hearse, and I saw the people carrying the casket hit the handle of the casket on the back of the hearse.

Q. What do you mean by the back of the hearse?

A. When the hearse door swings open, there is a little bit of the back of the hearse that stays still. Kind of like the part on either side of the tailgate of a pickup truck or SUV. The handle of the casket that was sticking out from the side hit this back part of the hearse.

- Q. Could you tell if the hearse was damaged?
- A. Yes, I saw some damage to the back of the hearse.
- Q. Did you actually see the damage occur?
- A. No, I just saw them hit the hearse, and then after the casket was inside, I saw the damage.
- Q. Could you tell if the casket was damaged?
- A. No, I could not see that.
- Q. What color was the casket that you saw hit the back of the hearse?
- A. It was black. Shiny black, like it was highly polished.
- Q. What happened next?
- A. I drove the cemetery to get there before the hearse. I was supposed to be up at the gravesite playing as they carried the casket up to the grave. I was standing by the grave when the hearse arrived, and I watched them get the casket out of the hearse.
- Q. What happened next?
- A. As they were carrying the casket up the hill, one of the pall bearers seemed to be having trouble holding onto the handle. He kind of bounced the casket up a little, just enough to take the weight off the handle so he could get a better grip. When he did that, the handle broke off, and the casket fell. When it hit the ground, the lid popped open, and the woman inside fell out and rolled down the hill.
- Q. What did you do then?
- A. I had no idea what to do. The family was horrified, and a lot of the people there were crying. Because they could not carry the casket with the broken handle, we all ended up going down to the bottom of the hill and having the graveside service there.
- Q. Was the handle that broke at the cemetery the same one that was hit on the back of the hearse?
- A. Yes.
- Q. Did you have any other involvement with this case?

A. No.

Q. Do you know anything about who made the casket?

A. I did not know at the time. But when I interviewed on campus for a sales rep job with Caskets-R-Us, I commented on what had happened at this funeral. The rep who was interviewing told me that it was their casket that had been involved. I thought that proved that it was a small world.

Q. What was the result of your interview?

A. Caskets-R-Us offered me a job as a sales rep. I will be starting to work for them in May after I graduate. I get a base salary plus commission, which is much better than playing the bagpipes.

Q. Did you tell them what you knew about this case before they hired you?

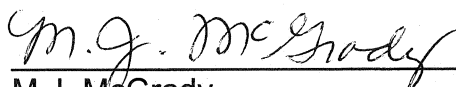
A. Yes.

Q. Were you ever interviewed for any of the media reports that discussed this incident?

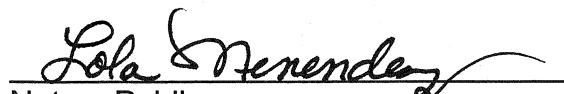
A. Yes, I was interviewed by the newspaper and by one of the television stations.

Q. Did you ever tell them about what you saw happen to the handle of the casket?

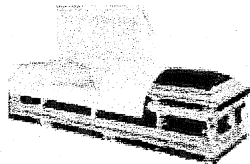
A. No. I didn't really think it was a big deal until I talked to the people at Caskets-R-Us.


M.J. McGrady

Sworn to and subscribed before me this
10th day of July, 2003.

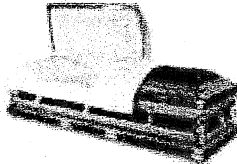

Notary Public

The Exceptional Value Line



Ebony Florence

Complete Delivered
Price - \$1199.00



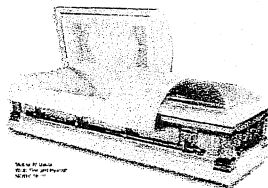
Bronze Florence

Complete Delivered
Price - \$1199.00



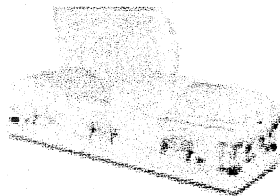
**Church In The
Wildwood - Bronze**

Complete Delivered
Price - \$1399.00



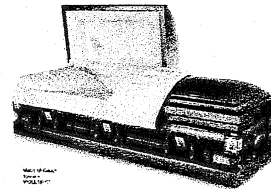
Beloved Mother

Complete Delivered
Price - \$1299.00



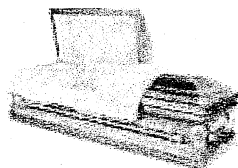
White Cross

Complete Delivered
Price - \$1299.00



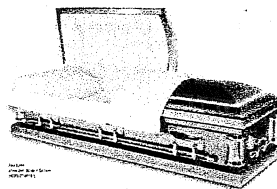
Tuscany - Violet

Complete Delivered
Price - \$1399.00



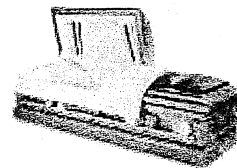
**Church In The
Wildwood - Blue**

Complete Delivered
Price - \$1399.00



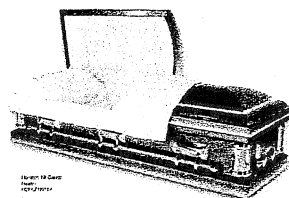
**Horizon - Powder
Blue/Silver**

Complete Delivered
Price - \$1395.00

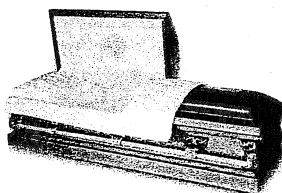


Veteran

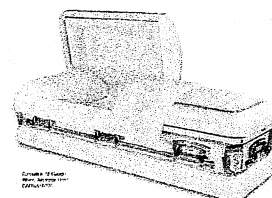
Complete Delivered
Price - \$1495.00



Horizon - Gunmetal

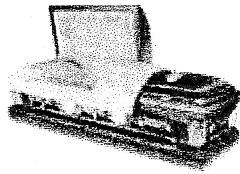


**Crown
EXHIBIT A**

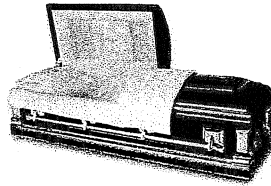


Carnation Primrose

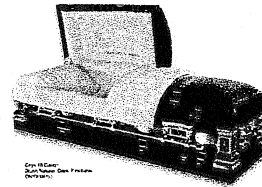
Complete Delivered Price
- \$1495.00



Complete Delivered Price - \$1450.00

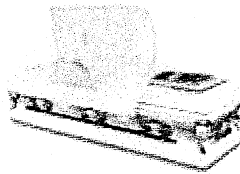


Complete Delivered Price - \$1595.00



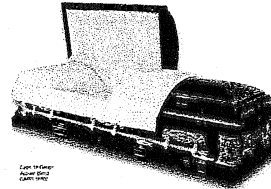
Until We Meet Again

Complete Delivered Price - \$1499.00



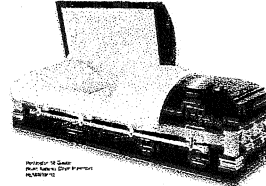
Father

Complete Delivered Price - \$1450.00



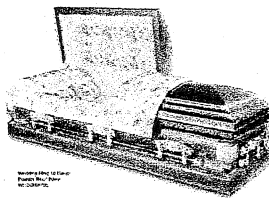
Onyx - Sheppard

Complete Delivered Price - \$1595.00



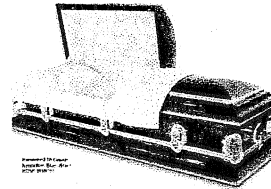
Violet

Complete Delivered Price - \$1499.00



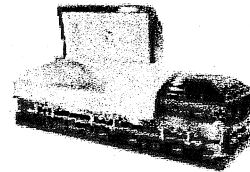
Capri

Complete Delivered Price - \$1495.00



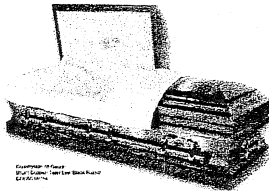
Remington

Complete Delivered Price - \$1495.00



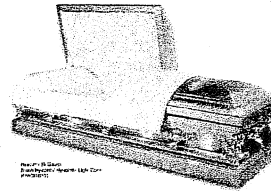
Wedding Rings

Complete Delivered Price - \$1659.00



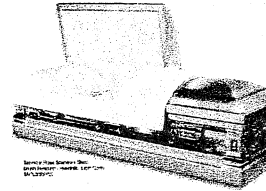
Homeward - Going Home

Complete Delivered Price - \$1525.00



American Beauty

Complete Delivered Price - \$1695.00

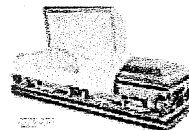


Countryside

Complete Delivered Price - \$1595.00

Hyacinth - Brushed

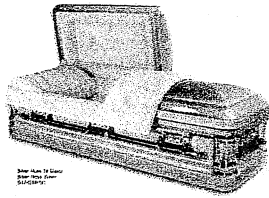
Complete Delivered Price - \$1495.00



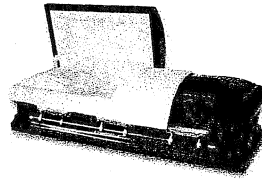
Tapestry Rose - Stainless Steel

Complete Delivered Price - \$1795.00

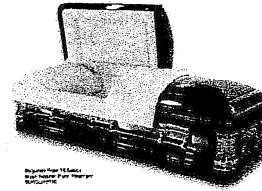
The Lords Supper
Complete Delivered Price - \$1595.00



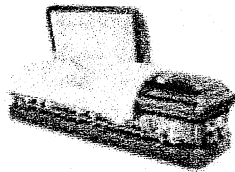
Silver Rose
Complete Delivered
Price - \$1695.00



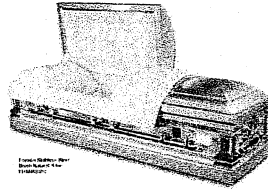
Providence
Complete Delivered
Price - \$1499.00



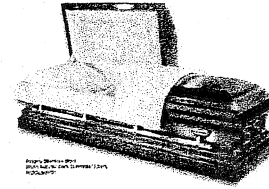
Burgandy Rose
Complete Delivered
Price - \$1750.00



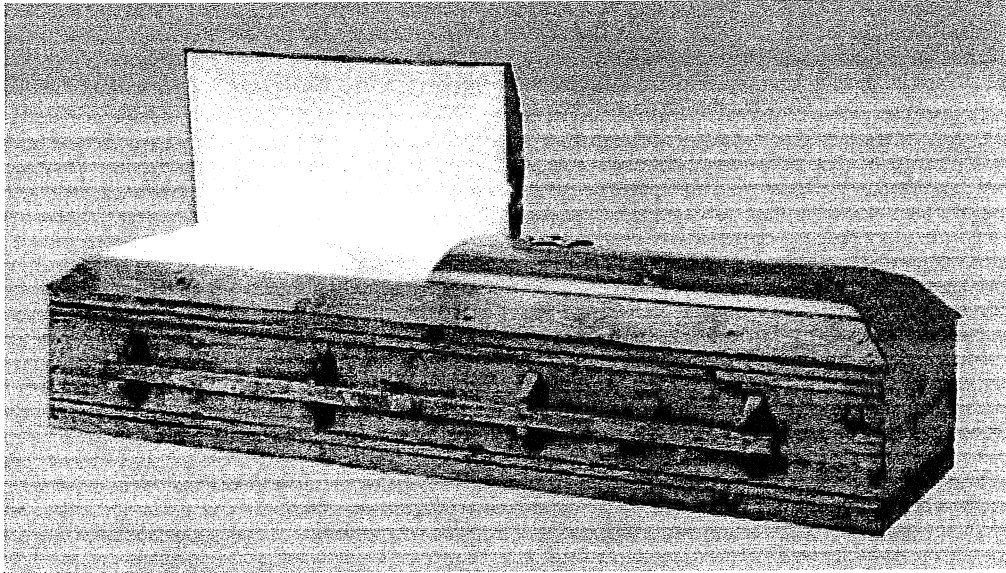
Tiger Eye
Complete Delivered
Price - \$1859.00



Franklin - Stainless Steel
Complete Delivered
Price - \$1995.00



Ridgely - Stainless Steel
Complete Delivered
Price - \$1995.00



Golden Finished Pine

Description :

Golden "oak finished" pine in a beautiful but simple design. Available with swing bar handles & copper plated lugs - or the wood rail handles shown.

May be selected for cremation or simple traditional burial. French crepe tailored interior - simple yet tasteful. Star of David is available also if requested.

Typical Price: ~~\$2495.00~~

Our Price: \$1199.00

Back

EXHIBIT C

SPECIFICATION SHEET

"GOLDEN FINISHED PINE" MODEL

Specifications:

* This casket is not designed for bodies over 76" tall. In addition, the combined weight of the casket and the body should not exceed 500 pounds. Caskets-R-Us, Inc. manufactures a separate line of caskets designed for exceptionally tall or heavy bodies. Please contact your sales representative for details on this line of caskets.

-38-

Mike Garage And Body Shop
5420 Patriot Street
Flagstown, Lone Star 74010
(123) 336-8688

Date: April 30 2007
Customer: Bell's Funeral Home
125 Main St
Flagstown
Vehicle: 1998 Cadillac Hearse

(123) 336-8688

Vehicle: 1998 Cadillac Hearse

Date: 5/2/02

-39-

PRELIMINARY JURY INSTRUCTIONS

You have now been sworn as the jury to try this case. This is a civil case involving a disputed claim or claims between the parties. Those claims and other matters will be explained to you later. By your verdict, you will decide the disputed issues of fact. I will decide the questions of law that arise during the trial, and before you retire to deliberate at the close of the trial, I will instruct you on the law that you are to follow and apply in reaching your verdict. In other words, it is your responsibility to determine the facts and to apply the law to those facts. Thus, the function of the jury and the function of the judge are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.

Before proceeding further, it will be helpful for you to understand how a trial is conducted. In a few moments, the attorneys for the parties will have an opportunity to make opening statements, in which they may explain to you the issues in the case and summarize the facts that they expect the evidence will show. Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be received as evidence.

After all the evidence has been received, the attorneys will again have the opportunity to address you and to make their final arguments. The statements that the attorneys now make and the arguments that they later make are not to be considered by you either as evidence in the case or as your instruction on the law. Nevertheless, these statements and arguments are intended to help you properly understand the

issues, the evidence, and the applicable law, so you should give them your close attention. Following the final arguments by the attorneys, I will instruct you on the law.

You should give careful attention to the testimony and other evidence as it is received and presented for your consideration, but you should not form or express any opinion about the case until you have received all the evidence, the arguments of the attorneys, and the instructions on the law from me. In other words, you should not form or express any opinion about the case until you retire to the jury room to consider your verdict.

The attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When a lawyer makes an objection, I will either overrule or sustain the objection. If I overrule an objection to a question, the witness will answer the question. If I sustain an objection, the witness will not answer, but you must not speculate on what might have happened or what the witness might have said had I permitted the witness to answer the question. You should not draw any inference from the question itself.

During the trial, it may be necessary for me to confer with the attorneys out of your hearing, talking about matters of law and other matters that require consideration by me alone. It is impossible for me to predict when such a conference may be required or how long it will last. When such conferences occur, they will be conducted so as to consume as little of your time as necessary for a fair and orderly trial of the case.

At this time, the attorneys for the parties will have an opportunity to make their opening statements, in which they may explain to you the issues in this case and give you a summary of the facts they expect the evidence will show.

FINAL JURY INSTRUCTIONS

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to decide the issues, and only those issues, that I submit for determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you to the facts as you find them from the evidence.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received into evidence, and all facts that may be admitted or agreed to by the parties. In determining the facts, you may draw reasonable inferences from the evidence. You may make deductions and reach conclusions which reason and common sense lead you to draw from the facts shown by the evidence in this case, but you should not speculate on any matters outside the evidence.

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in light of your own experience and common sense.

In your deliberations, you are to consider two distinct claims. In your deliberations, you should consider the evidence as it relates to each claim separately, as you would had each claim been tried before you separately. The issues for your

determination on the strict liability claim of Elroy Fudd against Caskets-R-Us, Inc. are whether the casket manufactured by Caskets-R-Us was defective when it left the possession of Caskets-R-Us and, if so, whether such defect was a legal cause of the injury sustained by Fudd.

A product is defective if by reason of its design the product is in a condition unreasonably dangerous to the user and the product is expected to and does reach the user without substantial change affecting that condition. A product is unreasonably dangerous because of its design if the product fails to perform as safely as an ordinary consumer would expect when used as intended or in a manner reasonably foreseeable by the manufacturer.

If the greater weight of the evidence does not support the claim of Fudd, then your verdict on the strict liability claim should be for Caskets-R-Us.

The issues for your determination on the breach of warranty claim are whether the casket was defective when it left the possession of Caskets-R-Us, and, if so, whether such defect was a legal cause of injury or damage sustained by Fudd. The casket is defective if it was not reasonably fit for the uses intended or reasonably foreseeable by Caskets-R-Us.

If the greater weight of the evidence does not support the breach of warranty claim, your verdict on that claim should be for Caskets-R-Us.

However, if the greater weight of the evidence supports either of Fudd's claims, then you should consider the defenses raised by Caskets-R-Us.

On the defense, the first issue for your determination is whether Fudd was, himself, negligent when he purchased the casket and, if so, whether such negligence was a contributing legal cause of the injury or damage claimed.

If the greater weight of the evidence does not support this defense of Caskets-R-Us, and the greater weight of the evidence does support one or more of the claims of Fudd, then your verdict should be for Fudd.

If, however, the greater weight of the evidence shows that the casket was defective and also shows that Fudd was negligent and that the defect and the negligence of Fudd each contributed as a legal cause of injury to Fudd, you should determine what percentage of the total fault is chargeable to each.

Certain defenses have been filed by Caskets-R-Us in this case which permit you, the jury, to determine whether persons who are not parties to this lawsuit may have also contributed to the injuries of Fudd. If you find that Bell's Funeral Home or its agents or employees were negligent either in selling the casket to Fudd or in handling the casket and that this negligence caused or contributed to Fudd's injury, you should determine what percentage of the total fault is chargeable to Bell's Funeral Home.

"Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in this case.

"Negligence" is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may consist either of doing something that a reasonable careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.

Negligence or a defect in a product is a legal cause of injury if it directly and in a natural and continuous sequence produces or contributes substantially to producing such injury so that it can reasonably be said that, but for the negligence or defect, the injury would not have occurred.

At this point in the trial, you, as jurors, are only deciding if Caskets-R-Us manufactured and warranted a defective product, if Bell's Funeral Home was negligent, and if Fudd was negligent. You will first return a verdict on that issue. If you find that Caskets-R-Us was at fault to any degree, at that time, you will hear additional argument from the attorneys and you will hear additional witnesses testify concerning damages.

Your verdict must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice, sympathy, or any other sentiment for or against any party.

When you retire to the jury room, you should select one of your members to act as foreperson, to preside over your deliberations, and to sign your verdict. Your verdict must be unanimous, that is, your verdict must be agreed to by each of you. You will be given a verdict form, which I shall now read and explain to you.

(READ VERDICT FORM)

When you have agreed on your verdict, the foreperson, acting for the jury, should date and sign the verdict form and return it to the courtroom. You may now retire to consider your verdict.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

CIVIL DIVISION

ELROY FUDD,

Plaintiff,

v.

CASKETS-R-US, INC.,

Defendant.

Case No. 02-1965

VERDICT

We, the jury, return the following verdict:

1. Was the casket manufactured by Caskets-R-Us defective by reason of its design?

YES _____

NO _____

2. Was the casket manufactured by Caskets-R-Us defective by being not reasonably fit for the uses intended or reasonably foreseeable by Caskets-R-Us?

YES _____

NO _____

If your answers to questions 1 and 2 are NO, your verdict is for Caskets-R-Us, Inc., and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to either question 1 or 2 is YES, please answer question 3.

3. Was the defect in the casket, if any, a legal cause of the injury sustained by Elroy Fudd?

YES _____

NO _____

If your answer to question 3 is NO, your verdict is for Caskets-R-Us, Inc., and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 3 is YES, please answer questions 4, 5, and 6.

4. Was there negligence on the part of Elroy Fudd which was a legal cause of his injury?

YES _____

NO _____

5. Was there negligence on the part of Bell's Funeral Home which was the legal cause of injury to Elroy Fudd?

YES _____

NO _____

6. Please state the percentage of fault, if any, which was the legal cause of Elroy Fudd's injury that you charge to:

Caskets-R-Us, Inc. _____%

Elroy Fudd _____%

Bell's Funeral Home _____%

The total of the three percentages must equal 100%.

SO SAY WE ALL this _____ day of _____, 2004.

Foreperson