

No. 236-184813-00

ROBERT E. CULL and S. JANE CULL

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IN THE DISTRICT COURT

V.

PERRY HOMES, A JOINT VENTURE,  
HOME OWNERS MULTIPLE EQUITY,  
INC. d/b/a HOME/RWC OF TEXAS,  
AND WARRANTY UNDERWRITERS  
INSURANCE COMPANY

TARRANT COUNTY, TEXAS

236TH JUDICIAL DISTRICT

**COURT'S CHARGE**

MEMBERS OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in the trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice, or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath, and such exhibits, if any, as have been introduced for your consideration under the rulings of the court. In other words, consider only what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win and then try to answer the questions accordingly. Simply answer the questions and do not discuss nor concern yourselves with the effect of your answers.
5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. Unless otherwise instructed, you may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

These instructions are given to you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

An important part of your function is to weigh and evaluate the evidence and testimony of each witness and document admitted into evidence by the Judge. In exercising this function, the jury may and should consider the conduct and demeanor of the witnesses, their bias, interest, prejudice, or lack of such qualities, and may and should determine the witness' credibility under the facts and circumstances of the case. You may accept part of a witness' testimony and reject part of it; you may accept all of it or reject all of it, and you may accept all of one witness' testimony and reject the testimony of another witness, although you must not do this arbitrarily.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence unless otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "**PREPONDERANCE OF THE EVIDENCE**" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in this case. Unless otherwise instructed, whenever a question requires other than a "Yes" or "No" answer, your answer must be based on a preponderance of the evidence.

## DEFINITIONS

1. "The home" means the property and house at 810 Doral Drive, in Mansfield, Texas 76063.
2. "The Culls" means Plaintiffs Robert E. Cull and S. Jane Cull.
3. "Perry Homes" means Defendant Perry Homes, A Joint Venture.
4. "Home Owners Multiple Equity, Inc." means Defendant Home Owners Multiple Equity, Inc. d/b/a HOME/RWC of Texas.
5. "Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event
6. "Producing cause" means a cause that was a substantial factor in bringing about the damages, if any, and without which the damages would not have occurred. There may be more than one producing cause.
7. "Market value" means the amount that would be paid in cash by a willing buyer who desires to buy, but is not required to buy, to a willing seller who desires to sell, but is under no necessity of selling.
8. Do not include in your answers on damages any amount that you find the Culls could have avoided by the exercise of reasonable care.

## INSTRUCTION

If you answer any questions about damages, you are instructed to answer each question separately. Do not increase or reduce the amount in any answers to any questions because of your answers to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the Court when it applies the law to your answers at the time of judgment.

**QUESTION NO. 1:**

Did Warranty Underwriters Insurance Company engage in any unfair or deceptive act or practice that caused damages to Robert E. Cull and S. Jane Cull?

“Unfair or deceptive act or practice” means any of the following:

Making or causing to be made any statement misrepresenting the terms, benefits, or advantages of an insurance policy

Or

Making, or directly or indirectly causing to be made, an assertion, representation, or statement with respect to insurance that was untrue, deceptive, or misleading

Or

Misrepresenting to a claimant a material fact or policy provision relating to the coverage at issue

Or

Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim when the insurer’s liability has become reasonably clear.

Or

Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement under one part of a policy, when the insurer’s liability has become reasonably clear, if the failure to settle was in order to influence the Culls to settle an additional claim under another part of the policy

Or

Refusing, failing or unreasonably delaying a settlement offer under the policy, because other coverage may have been available, or because other parties may be responsible for the damages the Culls’ suffered

Or

Trying to enforce a full and final release of a claim by the Culls, when only a partial payment had been made, unless the release was for a doubtful or disputed claim

Or

Refusing to pay a claim without conducting a reasonable investigation of the claim

Or

Making any misrepresentation relating to an insurance policy by:

- (A) Making any untrue statement of a material fact; or
- (B) Failing to state a material fact that is necessary to make other statements not misleading, considering the circumstances under which the statements are made; or
- (C) Making any statement in such a manner as to mislead a reasonably prudent person to a false conclusion of a material fact.

Answer "Yes" or "No": Yes

If your answer to any part of Questions 1 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 2:**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Culls for their damages, if any, that were caused by such unfair or deceptive act or practice?

Consider the following elements of damages, if any, and none other.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the Court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any, for each of the following:

- a. Mental anguish as to S. Jane Cull

Answer: \$ 1,000,000

- b. Mental anguish as to Robert E. Cull

Answer: \$ 1,000,000

- c. The reasonable cost of repairs necessary to cure damages resulting from any construction defect(s).

Answer: \$ 137,877

- d. The reduction in market value, if any, to the extent the reduction is due to structural failure.

Answer: \$ 37,700

If your answer to any part of Questions No. 1 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 3:**

Did Warranty Underwriters Insurance Company engage in any such conduct knowingly?

"Knowingly" means actual awareness of the falsity, unfairness, or deceptiveness of the act or practice on which a claim for damages is based. Actual awareness may be inferred if objective manifestations indicate that a person acted with actual awareness.

In answering this question, consider only the conduct that you have found resulted in damages to the Culls.

Answer "Yes" or "No": Yes

If your answer to Question No. 3 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 4:**

What sum of money, if any, in addition to actual damages, should be awarded to ROBERT E. CULL and S. JANE CULL against Defendants because Defendants' conduct was committed knowingly?

Answer in dollars and cents, if any.

a. S. Jane Cull

Answer: \$ 2.5 million

b. Robert E. Cull

Answer: \$ 2.5 million



**QUESTION NO. 5:**

Did Warranty Underwriters Insurance Company fail to comply with its duty of good faith and fair dealing to the Culls?

An insurer fails to comply with its duty of good faith and fair dealing by –

Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim when the insurer's liability has become reasonably clear

Or

Refusing to pay a claim without conducting a reasonable investigation of the claim

Answer "Yes" or "No": Yes

If your answer to any part of Questions 5 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 6:**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Culls for their damages, if any, that were proximately caused by such conduct?

Consider the following elements of damages, if any, and none other.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the Court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any, for each of the following:

a.  Mental anguish as to S. Jane Cull

Answer: \$ 1,000,000

b. Mental anguish as to Robert E. Cull

Answer: \$ 1,000,000

c. The reasonable cost of repairs necessary to cure damages resulting from any construction defect(s).

Answer: \$ 137,877

d. The reduction in market value, if any, to the extent the reduction is due to structural failure.

Answer: \$ 37,700

If you answered "Yes" to Question 5, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 7:**

Do you find by clear and convincing evidence that the harm to the Culls resulted from malice?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means:

(a) A specific intent by Warranty Underwriters Insurance Company to cause substantial injury to the Culls;

Or

(b) An act or omission by Warranty Underwriters Insurance Company,

- i. Which when viewed objectively from the standpoint of the Warranty Underwriters Insurance Company at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
- ii. Of which the Warranty Underwriters Insurance Company has actual, subjective awareness of the risk involved, but nevertheless proceed with conscious indifference to the rights, safety, or welfare of others.

Answer "Yes" or "No":     No

**QUESTION NO. 8:**

Did Warranty Underwriters Insurance Company engage in any false, misleading, or deceptive act or practice that the Culls relied on to their detriment and that was a proximate cause of damages to the Culls?

*"False, misleading, or deceptive act or practice"* means any of the following:

Representing that goods or services have or would have characteristics that they did not have;

Or

Representing that goods or services are or will be of a particular quality if they were of another;

Or

Representing that an agreement confers or involves rights <sup>in</sup> that it did not have or involve;

Or

Failing to disclose information about services that was known at the time of the transaction with the intention to induce the Culls into a transaction they otherwise would not have entered into if the information had been disclosed.

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 8, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 9:**

Did Warranty Underwriters Insurance Company engage in any such conduct knowingly?

"Knowingly" means actual awareness, at the time of the conduct, of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

In answering this question, consider only the conduct that you have found was a proximate cause of damages to the Culls.

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 8, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 10:**

Did Warranty Underwriters Insurance Company engage in any such conduct intentionally?

"Intentionally" means actual awareness of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty, coupled with the specific intent that the consumer act in detrimental reliance on the falsity or deception *or detrimental ignorance of the unfairness*. Specific intent may be inferred where objective manifestations indicate that a person acted intentionally *or may be inferred from facts showing that the person acted with such flagrant disregard of prudent and fair business practices that the person should be treated as having acted intentionally*.

In answering this question, consider only the conduct that you have found was a proximate cause of damages to the Culls.

Answer "Yes" or "No": Yes

If your answer to any part of Questions 8 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 11:**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Culls for their damages, if any, that were proximately caused by such conduct?

Consider the following elements of damages, if any, and none other.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the Court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any, for each of the following:

Answer (a) and (b) below only if you answered "Yes" to Question Nos. 9 or 10. Otherwise, do not answer (a) or (b).

a. Mental anguish as to S. Jane Cull

Answer: \$ 1,000,000

b. Mental anguish as to Robert E. Cull

Answer: \$ 1,000,000

c. The reasonable cost of repairs necessary to cure damages resulting from any construction defect(s).

Answer: \$ 137,877

d. The reduction in market value, if any, to the extent the reduction is due to structural failure.

Answer: \$ 37,700

If your answer to Question Nos. 9 or 10 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 12:**

What sum of money, if any, in addition to actual damages, should be awarded to ROBERT E. CULL and S. JANE CULL against Warranty Underwriters Insurance Company because Warranty Underwriters Insurance Company's conduct was committed knowingly or intentionally?

Answer in dollars and cents, if any.

a. S. Jane Cull

Answer: \$ 2.5 million

b. Robert E. Cull

Answer: \$ 2.5 million



**QUESTION NO. 13:**

Did Perry Homes engage in any false, misleading, or deceptive act or practice that the Culls relied on to their detriment and that was a proximate cause of damages to the Culls?

*"False, misleading, or deceptive act or practice"* means any of the following:

Representing that goods or services have or would have characteristics that they did not have;

Or

Representing that goods or services are or will be of a particular quality if they were of another;

Or

Representing that an agreement confers or involves rights that it did not have or involve;

Or

Failing to disclose information about goods or services that was known at the time of the transaction with the intention to induce the Culls into a transaction they otherwise would not have entered into if the information had been disclosed.

Answer "Yes" or "No":     Yes

**QUESTION NO. 14:**

Did Perry Homes engage in any unconscionable action or course of action that was a proximate cause of damages to the Culls?

An *unconscionable action or course of action* is an act or practice that, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumers to a grossly unfair degree.

Answer "Yes" or "No":       Yes

**QUESTION NO. 15:**

Was the failure, if any, of Perry Homes to comply with a warranty a proximate cause of damages to the Culls?

"Failure to comply with a warranty" means any of the following:

Failing to comply with an express warranty:

*An express warranty* is any affirmation of fact or promise made by PERRY HOMES that relates to the home and becomes part of the basis of the bargain. It is not necessary that formal words such as "warrant" or "guarantee" be used or that there be a specific intent to make a warranty.

Or

Failing to construct a home in a good and workmanlike manner.

*A good and workmanlike manner* is that quality of work performed by one who has the knowledge, training or experience necessary for the successful practice of a trade or occupation and performed in a manner generally considered proficient by those capable of judging such work.

Answer "Yes" or "No":

Yes

**QUESTION NO. 16:**

Was the failure, if any, of Warranty Underwriters Insurance Company to comply with the warranty a proximate cause of damages to the Culls?

Answer "Yes" or "No": Yes

If you answered "Yes" to any of the following Question Nos. 13, 14, 15, or 16, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 17:**

Did Defendants engage in any such conduct knowingly?

"Knowingly" means actual awareness, at the time of the conduct, of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

In answering this question, consider only the conduct that you have found was a proximate cause of damages to the Culls.

Answer "Yes" or "No" for each of the following:

a. PERRY HOMES

Yes

b. WARRANTY UNDERWRITERS INSURANCE  
COMPANY

Yes

If you answered "Yes" to any of the following Question Nos. 13, 14, 15, or 16, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 18:**

Did Defendants engage in any such conduct intentionally?

"Intentionally" means actual awareness of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty, coupled with the specific intent that the consumer act in detrimental reliance on the falsity or deception *or detrimental ignorance of the unfairness*. Specific intent may be inferred where objective manifestations indicate that a person acted intentionally *or may be inferred from facts showing that the person acted with such flagrant disregard of prudent and fair business practices that the person should be treated as having acted intentionally*.

In answering this question, consider only the conduct that you have found was a proximate cause of damages to the Culls.

Answer "Yes" or "No" for each of the following:

a. PERRY HOMES

Yes

b. WARRANTY UNDERWRITERS INSURANCE  
COMPANY

Yes

If your answer to any part of Question Nos. 13, 14, 15, or 16 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 19:**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Culls for their damages, if any, that resulted from such conduct?

Consider the following elements of damages, if any, and none other.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the Court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents, if any, for each of the following:

Answer (a) and (b) below only if you answered any part of questions number 17 or 18 "Yes." Otherwise, do not answer (a) or (b).

a. Mental anguish as to S. Jane Cull

Answer: \$ 1,000,000

b. Mental anguish as to Robert E. Cull

Answer: \$ 1,000,000

c. The reasonable cost of repairs necessary to cure damages resulting from any construction defect(s).

Answer: \$ 137,877

d. The reduction in market value, if any, to the extent the reduction is due to structural failure.

Answer: \$ 37,700

If your answer to Question Nos. 17 or 18 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 20:**

What sum of money, if any, in addition to actual damages, should be awarded to ROBERT E. CULL and S. JANE CULL against Defendants because Defendants' conduct was committed knowingly *or intentionally?* ~~do~~

Answer in dollars and cents, if any.

b. S. Jane Cull

Answer: \$ 2.5 million

b. Robert E. Cull

Answer: \$ 2.5 million



**QUESTION NO. 21:**

Did Perry Homes fail to comply with the Earnest Money Contract?

Answer "Yes" or "No": Yes

If your answer to Question No. 21 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 22:**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Culls for their damages, if any, that resulted from such failure to comply?

Consider the following elements of damages, if any, and none other.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the Court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents, if any, for each of the following:

- a. The reasonable cost of repairs necessary to cure damages resulting from any construction defect(s).

Answer: \$ 137,877

- b. The reduction in market value, if any, to the extent the reduction is due to structural failure.

Answer: \$ 37,700

**QUESTION NO. 23:**

Did any of the following commit fraud against the Culls?

*Fraud* occurs when-

- a. a party makes a material misrepresentation,
- b. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion,
- c. the misrepresentation is made with the intention that it should be acted on by the other party, and
- d. the other party relies on the misrepresentation and thereby suffers injury.

*"Misrepresentation"* means a false statement of fact.

Or

*Fraud* occurs when-

- a. a party fails to disclose a material fact within the knowledge of that party,
- b. the party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth,
- c. the party intends to induce the other party to take some action by failing to disclose the fact, and
- d. the other party suffers injury as a result of acting without knowledge of the undisclosed fact.

Answer "Yes" or "No" for each of the following:

a. PERRY HOMES

Yes

b. WARRANTY UNDERWRITERS INSURANCE COMPANY

Yes

If your answer to Question No. 23 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 24:**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Culls for their damages, if any, that resulted from such fraud?

Consider the following elements of damages, if any, and none other.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the Court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents, if any, for each of the following:

a. Mental anguish as to S. Jane Cull

Answer: \$ 1,000,000

b. Mental anguish as to Robert E. Cull

Answer: \$ 1,000,000

c. The reasonable cost of repairs necessary to cure damages resulting from any construction defect(s).

Answer: \$ 137,877

d. The reduction in market value, if any, to the extent the reduction is due to structural failure.

Answer: \$ 37,700

**QUESTION NO. 25:**

Did Perry Homes commit statutory fraud against the Culls?

*Statutory fraud* occurs when-

- a. there is a false representation of a past or existing material fact,
- b. the false representation is made to a person for the purpose of inducing that person to enter into a contract, and
- c. the false representation is relied on by that person in entering into that contract.

Or

*Statutory fraud* occurs when –

- a. a party makes a false promise to do an act,
- b. the promise is material,
- c. the promise is made with the intention of not fulfilling it,
- d. the promise is made to a person for the purpose of inducing that person to enter into a contract, and
- e. that person relies on the promise in entering into that contract.

Answer "Yes" or "No":

No

If your answer to any part of Question No. 25 is "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 26:**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Culls for their damages, if any, that resulted from such statutory fraud?

Consider the following elements of damages, if any, and none other.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the Court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents, if any, for each of the following:

- a. Mental anguish as to S. Jane Cull

Answer: \$ \_\_\_\_\_

- b. Mental anguish as to Robert E. Cull

Answer: \$ \_\_\_\_\_

- c. The reasonable cost of repairs necessary to cure damages resulting from any construction defect(s).

Answer: \$ \_\_\_\_\_

- d. The reduction in market value, if any, to the extent the reduction is due to structural failure.

Answer: \$ \_\_\_\_\_

If you unanimously answered Question No. 25 "Yes," then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 27:**

Did Perry Homes have actual awareness of the falsity of the representation or promise you found to be fraud in Question No. 25?

Actual awareness may be inferred where objective manifestations indicate a person acted with actual awareness.

Answer "Yes" or "No": \_\_\_\_\_

**QUESTION NO. 28:**

Did the negligence, if any, of any of those named below proximately cause the damages in question?

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Negligence" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

Answer "Yes" or "No" for each of the following:

a. PERRY HOMES

Yes

b. THE CULLS

No

If you answered "Yes" in response to Question No. 28 for more than one of those named below, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 29:**

Assign percentages of responsibility only to those that you found caused or contributed to cause the damages. The percentages you find must total 100 percent.

The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question. For each person you found caused or contributed to cause the damages, find the percentage of responsibility attributable to each:

a.	Perry Homes	<u>100</u>	%
b.	The Culls	<sup>JEP</sup> <del>100</del> <u>0</u>	%
	Total	<u>100</u>	%



If your answer to Question No. 28 is "Yes" as to Perry Homes, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 30:**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Culls for their damages, if any, that resulted from such negligence?

Consider the following elements of damages, if any, and none other.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the Court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents, if any, for each of the following:

- a. The reasonable cost of repairs necessary to cure damages resulting from any construction defect(s).

Answer: \$ 137,877

- b. The reduction in market value, if any, to the extent the reduction is due to structural failure.

Answer: \$ 37,700

If you have answered "Yes" to Question No. 28 as to Perry Homes, and you have inserted a sum of money in answer to Question No. 30, then answer the following question. Otherwise, do not answer the following question.

**QUESTION No. 31:**

Do you find by clear and convincing evidence that the harm to the Culls resulted from malice?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means:

- (a) a specific intent by Perry Homes to cause substantial injury to the Culls; or
- (b) an act or omission by Perry Homes,
  - (i) which, when viewed objectively from the standpoint of Perry Homes at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
  - (ii) of which Perry Homes had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

Answer "Yes" or "No": Yes

If you answered "Yes" to any part of Question Nos. 1, 5, 8, 13, 14, 15, 16, 21, or 25, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 32:**

What is a reasonable fee for the necessary services of the Culls' attorneys in this case, stated in dollars and cents.

In answering this question, you should consider the following factors:

1. The time and labor involved, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
3. The fee customarily charged in the locality for similar legal services;
4. The amount involved;
5. The time limitations imposed by the client or the circumstances;
6. The nature and length of the professional relationship with the client; and
7. The experience, reputation, and ability of the lawyer performing the services.

Answer in dollars and cents with an amount for each of the following:

- a. For preparation and trial.

Answer: \$ 150,000

- b. For an appeal to the Court of Appeals

Answer: \$ 50,000

- c. For a petition for review to the Supreme Court of Texas

Answer: \$ 10,000

- d. For a brief on the merits in the Supreme Court of Texas

Answer: \$ 10,000

- e. For preparing and attending oral arguments in the Supreme Court of Texas

Answer: \$ 10,000

**QUESTION NO. 33:**

What is the difference in market value of the home as constructed and its market value had it been constructed without defects or deviations?

Answer: \$ 37,700

After you retire to the jury room, you will select your own Presiding Juror, and then you will deliberate upon your answers to the questions asked.

It is the duty of the Presiding Juror:

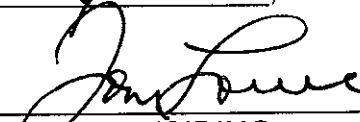
1. To preside during your deliberations;
2. To see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge;
3. To write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge;
4. To conduct the vote on the questions;
5. To write your answers to the questions in the spaces provided; and,
6. To certify to your verdict in the space provided for the Presiding Juror's signature, or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the court of this fact.

The presiding juror or any other juror who observes a violation of the Judge's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When you have answered all the questions you are required to answer under the instructions of the Judge, and the Presiding Juror has placed your answers in the spaces provided and signed the verdict as Presiding Juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will be returned into court with your verdict.

Signed this 25 day of February, 2010.

  
\_\_\_\_\_  
JUDGE PRESIDING

**CERTIFICATE**

We, the Jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the Presiding Juror if unanimous)

Janet R Ponder  
Presiding Juror  
Janet R. Ponder Date: 3/11/2010  
Printed Name of  
Presiding Juror

(To be signed by those voting for the verdict if not unanimous)

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

<u>Please Print Name</u>	<u>Signature</u>
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____
4. _____	4. _____
5. _____	5. _____
6. _____	6. _____
7. _____	7. _____
8. _____	8. _____
9. _____	9. _____
10. _____	10. _____
11. _____	11. _____