

STATE OF MICHIGAN
COURT OF APPEALS

STATE FARM AND CASUALTY COMPANY,
subrogee of Thomas and Jean Chaldekas,

UNPUBLISHED
March 30, 2001

Plaintiff-Appellant/Cross-Appellee,

v

PARKS CORPORATION and ACE HARDWARE
CORPORATION,

No. 219322
St. Clair Circuit Court
LC No. 96-001092 NP

Defendants-Appellees/Cross-
Appellants.

Before: O'Connell, P.J., and White and Saad, JJ.

WHITE, J. (*concurring*).

I agree that plaintiff is not entitled to a new trial on the basis that the trial court refused to give instructions specifically addressed to the failure to warn claim. The failure to warn claim, which focused at least as much on the label's failure to adequately warn Winisky as Chaldekas, was fully litigated and argued to the jury. In this context, the standard jury instructions given to the jury called upon the jury to determine whether defendants acted reasonably, including whether their conduct with respect to the warnings was reasonable. Because my reading of the record convinces me that the jury understood that the failure to warn claim was part of the case, and understood that it must consider the reasonableness of the warnings in light of the foreseeability of the harm, I agree that reversal is not warranted.

I also agree that the verdict form was adequate. It was clear to the jury that the question regarding negligence covered all aspects of plaintiff's claim. Additionally, I agree that the refusal to admit the document cancellation was not reversible error, and that the court did not err in determining that the claim was not frivolous.

/s/ Helene N. White