

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

THE STANDARD FIRE INSURANCE CO.
a/s/o Julie Newcomb,

Plaintiff,

v.

08-cv-540-slc

ELECTROLUX HOME PRODUCTS, INC.,

Defendant.

II. POST-TRIAL INSTRUCTIONS

Introduction

Now that you have heard the evidence and the arguments, I will give you the instructions that will govern your deliberations in the jury room. It is my job to decide what rules of law apply to the case and to explain those rules to you. It is your job to follow the rules, even if you disagree with them or don't understand the reasons for them. You must follow all of the rules; you may not follow some and ignore others.

The decision you reach in the jury room must be unanimous. In other words, you must all agree on the answer to each question.

Your deliberations will be secret. You will never have to explain your verdict to anyone.

If you have formed any idea that I have an opinion about how the case should be decided, disregard that idea. It is your job, not mine, to decide the facts of this case.

The case will be submitted to you in the form of a special verdict consisting of 10 questions. In answering the questions, you should consider only the evidence that has been received at this trial. During the trial, I ordered certain testimony to be stricken. You are directed to disregard all stricken testimony. When answering the verdict questions, do not concern yourselves with whether your answers will be favorable to one side or another, or with what the final result of this lawsuit may be.

Note that certain questions in the verdict are to be answered only if you answer a preceding question in a certain manner. Read the introductory portion of each question very carefully before you undertake to answer it. Do not answer questions needlessly.

Burden of Proof

Certain questions on the verdict form ask that you answer the question “yes” or “no.” The burden of proof is on the party contending that the answer to a question should be “yes.” When a party has the burden of proof, this means that they must prove the matter by a preponderance of the evidence, such that you must be persuaded by the testimony and exhibits that the matter sought to be proved is more probably true than not true. You should base your decision on all of the evidence, regardless of which party presented it.

Cause

In answering questions 2, 4 and 6, you must decide whether someone’s negligence caused the fire in Ms. Newcomb’s home to occur. These questions do not ask you about “the cause” but rather “a cause” because an event may have more than one cause. Someone’s negligence

caused the event if it was a substantial factor in producing the event. An event may be caused by one person's negligence or by the combined negligence of two or more people.

Strict Liability: Duty of a Manufacturer to the Ultimate User

A manufacturer of a product who sells a defective product which is unreasonably dangerous to the ordinary user or consumer, and which is expected and does reach the consumer without substantial change in the condition in which it is sold, is regarded by law as responsible for harm caused by the product even though he or she has exercised all possible care in the preparation and sale of the product, provided the product was being used for the purpose for which it was designed and intended to be used.

A product is said to be defective when it is in a condition not contemplated by the ordinary user or consumer that is unreasonably dangerous to the ordinary user or consumer, and the defect arose out of design, manufacture, or inspection while the article was in the control of the manufacturer. A defective product is unreasonably dangerous to the ordinary user or consumer when it is dangerous to an extent beyond that which would be contemplated by the ordinary user possessing the knowledge of the product's characteristics which were common to the community. A product is not defective if it is safe for normal use.

A manufacturer is not under a duty to manufacture a product which is absolutely free from all possible harm to every individual. It is the duty of the manufacturer not to place upon the market a defective product which is unreasonably dangerous to the ordinary user or consumer.

Question 1 on the verdict form asks:

When the subject dryer left the possession of Electrolux Home Products was the dryer in a defective condition so as to be unreasonably dangerous to a prospective user?

Before you can answer Question No. 1 "yes," you must be satisfied that: (1) the dryer was in a defective condition; (2) the defective condition made the dryer unreasonably dangerous to people; (3) the defective condition of the dryer existed when the dryer was under the control of the manufacturer; and (4) the dryer reached the user (consumer) without substantial change in the condition in which it was sold.

Strict Liability: Contributory Negligence: User

Negligence, defined in greater detail below, is a failure to exercise ordinary care.

The user of a product has the duty to exercise ordinary care for his or her own safety and protection and, to that end, to reasonably use the product for the purpose for which it was intended. If you should find that the user failed to follow directions and warnings that are adequate, if you find they were adequate, as to the use of the product, then you will find the plaintiff negligent. If you are not so satisfied, you will find the plaintiff not negligent.

Negligence

A person or a company is negligent when that person or company fails to exercise ordinary care. Ordinary care is the care which a reasonable person would use in similar circumstances. A person or company is not using ordinary care and is negligent, if the person or company, without intending to do harm, does something or fails to do something that a

reasonable person would recognize as creating an unreasonable risk of injury or damage to a person or property.

Negligence: Duty of Manufacturer

It is the duty of a manufacturer to exercise ordinary care in the design, construction, and manufacture of its product so as to render the product safe for its intended use and also safe for unintended uses which are reasonably foreseeable.

It is the further duty of the manufacturer, in the exercise of ordinary care, to make all reasonable and adequate tests and inspections of its product so as to guard against any defective condition which would render such product unsafe when used as it is intended to be used. A manufacturer is charged with the knowledge of its own methods of manufacturing its product and the defects in such methods, if any. Failure of the manufacturer to perform any such duty constitutes negligence.

Duty of Consumer

The consumer has a duty to use ordinary care for his or her own safety and protection and, to that end, to observe all obvious and patent defects and dangerous conditions, if any, which are open and obvious to him or her if he or she is using reasonable care and caution for his or her own safety and protection. The danger, however, must not only be obvious but also must be understood by the consumer. The failure to use a product in accordance with the instructions which are adequate, if you find they were adequate, or the use of such product in an abnormal manner is negligence.

A person is not bound absolutely by law to see every defect or dangerous condition or even to remember the existence of every defect or dangerous condition of which he or she had knowledge. He or she is only required to act as a reasonably prudent person under the same or similar circumstances would act.

A person is not required to anticipate negligent acts or omissions on the part of others and is not guilty of contributory negligence in failing to look out for danger when there is no reason to suspect any such danger.

Questions 1 and 2 of the special verdict will ask you to determine whether the accident was a result of a defective condition. You have been instructed that the law holds manufacturers responsible for harm caused by a product even though the manufacturer exercised all possible care in the preparation and sale of the product, provided the product was being used for the purpose for which it was designed and intended to be used. However, you must also determine whether Ms. Newcomb was negligent with respect to causing the fire. If you find that Ms. Newcomb was negligent and that her negligence caused the fire, Question No. 7 asks you to determine what percentage of the property damage caused by the fire was caused by the defective product or Ms. Newcomb's negligence.

Answers Not Based on Guesswork

If, after you have discussed the testimony and all other evidence that bears upon a particular question, you find that the evidence is so uncertain or inadequate that you have to guess what the answer should be, then the party having the burden of proof as to that question

has not met the required burden of proof. Your answers are not to be based on guesswork or speculation. They are to be based upon credible evidence from which you can find the existence of the facts that the party must prove in order to satisfy the burden of proof on the question under consideration.

Selection of Presiding Juror; Communication with the Judge; Verdict

When you go to the jury room to begin considering the evidence in this case you should first select one of the members of the jury to act as your presiding juror. This person will help to guide your discussions in the jury room.

You are free to deliberate in any way you decide or select whomever you like as a presiding juror. However, I am going to provide some general suggestions on the process to help you get started. When thinking about who should be presiding juror, you may want to consider the role that the presiding juror usually plays. He or she serves as the chairperson during the deliberations and has the responsibility of insuring that all jurors who desire to speak have a chance to do so before any vote. The presiding juror should guide the discussion and encourage all jurors to participate.

Once you are in the jury room, if you need to communicate with me, the presiding juror will send a written message to me. However, don't tell me how you stand as to your verdict. As I have mentioned before, the decision you reach must be unanimous; you must all agree. When you have reached a decision, the presiding juror will sign the verdict form, put a date on it, and all of you will return with the verdict into the court.

Suggestions for Conducting Deliberations

In order to help you determine the facts, you may want to consider discussing one claim at a time, and use my instructions to the jury as a guide to determine whether there is sufficient evidence to prove all the necessary legal elements for each claim or defense. I also suggest that any public votes on a verdict be delayed until everyone can have a chance to say what they think without worrying what others on the panel might think of their opinion. I also suggest that you assign separate tasks, such as note taking, time keeping and recording votes to more than one person to help break up the workload during your deliberations. I encourage you at all times to keep an open mind if you ever disagree or come to conclusions that are different from those of your fellow jurors. Listening carefully and thinking about the other juror's point of view may help you understand that juror's position better or give you a better way to explain why you think your position is correct.