

### Premises Liability/Products Liability

#### Settlement In Suit Arising From Fire From Christmas Tree Lights

On the morning of Dec. 24, 1992, the plaintiff, a 3 1/2 year-old boy, was sleeping alone in a room which contained a Christmas tree. The Christmas tree caught on fire and the plaintiff parents, who were sleeping in adjoining bedrooms, removed the child from the scene of the fire in an unconscious state.

The plaintiff parents alleged that they had purchased the Christmas tree lights a short time before the fire at the defendant retail store, but paid cash and did not retain a sales slip. The defendant retail store denied that they had sold this particular brand of lights. The bar code on the Christmas tree lights box was traced to the defendant importer which denied that it was the exclusive importer of this brand of lights and thus denied that it could be traced to the particular box in question.

The plaintiffs brought an action against the defendants based on product liability, negligence and infliction of emotional distress theories of recovery. The defendant landlord, who owned the rented premises and was originally brought into the liti-

gation because of allegations that the electrical system in the house was faulty, eventually settled. The retail store and importer also settled before trial. The claims of defect by the plaintiffs involved poor quality control at the factory, allowing renegade wires and cracked bulb holders, among other things, which, according to the plaintiffs' experts, could create enough heat in some circumstances to eventually set fire to the tree.

Trial then proceeded against defendant inspection laboratory on the theory that the defendant inspectors had given their seal of approval to lights which were defective.

The inspectors denied that the lights were defective, and argued that even if they were defective in the manner in which the plaintiffs' expert described, they could not possibly set fire to the tree. The inspectors contended that it was more likely that the tree was set fire by the minor plaintiff with a fire-place lighter or with a cigarette lighter. The defense also alleged that the tree was not properly watered. The plaintiffs produced a Christmas tree expert from the state of Washington who contended that the tree was in acceptable condition and, furthermore, pointed out that after the fire, the wooden floor un-

der the tree was preserved because of the spillage of water contained in a water container at the bottom of the tree. The defense conducted a number of experiments to attempt to prove that it was impossible for these miniature lights to create enough heat, even given the alleged defects, to cause the fire. The plaintiffs' experts were never able to duplicate the fire but argued that there were so many factors that it might be impossible to duplicate. The plaintiffs' position was that the defendant inspectors charged fees for conducting on-site tests of electrical products and, as a practical matter, an electrical product cannot be sold in the United States without the defendant's logo. The plaintiffs' also argued that if the defects sought to be guarded against could not possibly cause a fire, as the defendant contended, then the defendant was accomplishing nothing by its testing.

**Injury:** The minor plaintiff suffered substantial burns to his face, neck, hands, arms and upper chest which led to extensive and unsightly scarring. In addition, the plaintiff's neuropsychological testimony suggested that, as a result of being overcome by smoke and being rendered unconscious, he suffered brain injuries which would affect him academically and vocationally in the future. The plaintiff was hospitalized for approximately four months and underwent extensive plastic surgeries. His treating plastic surgeon testified at trial that future corrective surgeries would be needed when he stopped growing.

**Result:** Settlement consisting of \$254,414 from the defendant importer; \$50,000 from the defendant landlord; \$150,000 from the defendant retail store and a confidential amount from defendant inspection laboratory.

The settlement with the defendant inspection laboratory followed two weeks of trial.

**Plaintiffs' Expert Witnesses:** Joyce Elaine Pickersgill, economist, Santa Ana, Cal.; John Stewart, electrical engineer, Tacoma, Wash.; Gary Chastagner, plant pathologist, Puyallup, Wash.; Gordon Damant, flammability, Sacramento, Cal.; Lamont McGill, fire cause and origin, Sacramento, Cal.; Anthony Stellino, merchandising, Glendale, Cal.

**Defendants' Expert Witnesses:** Douglas Bennett, electrical engineer, Long Beach, Cal.;

Robert Beauchamp, fire cause and origin, Costa Mesa, Cal.; Thomas L. Black, electrical engineer/human factors, Rancho Santa Fe; Charles S. Allen, photographic analysis, Pasadena.

**Plaintiffs' Attorneys:** Lawrence R. Booth, Richard B. Koskoff of Booth & Koskoff, Torrance, Cal.

**Defendants' Attorneys:** Edith R. Matthai of Robie & Matthai, L.A. (for defendant retail store; Laurence A. Dornstein of Bivona & Cohen, L.A. (for defendant importer); James H. Goudge of Dennison, Bennett & Press, Woodland Hills, Cal. (for defendant landlord); Steven J. Freeburg of Freeburg, Judy & Nettels, Pasadena (for defendant inspection laboratory).

*Aguilar v. Dayton Hudson Corp.*, (Los Angeles Cty. Super. Ct. Cal. March 6, 1998)

### Comments

According to information provided by plaintiff's attorney, Lawrence R. Booth, the parents had saved the box from the lights. Although it did not identify the retailer, it identified the specific type of lights and name of the Chinese manufacturer. The lights involved in the fire were destroyed by the fire, and, in fact, the remnants were discarded by the fire department because they crumbled when they tried to pick them up. The plaintiffs' attorneys spent several years looking for exemplar lights and an investigator happened to be shopping in a store in Orange County and found 10 boxes of the identical lights which were purchased for testing. Since these lights are not dated, the problem then became establishing that the exemplar lights were produced in the same year and at the same time that the defendant inspectors were present at the factory. This was done by the use of a merchandising expert who testified that Christmas tree lights are generally sold in the year in which they are produced and who painstakingly went through the import records to establish, by process of elimination, that the exemplar lights were probably shipped at the same time as the accident lights.