

## Product Liability – Flammable Liquid

### SERVICES

Product Liability

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Dawn M. Piccirilli

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This case involved a highly flammable liquid paint stripper. Boyle | Shaughnessy Law Shareholder, Dawn Piccirilli, represented the chemical manufacturer of the liquid stripper, W.M. Barr of Memphis, Tennessee. Rocky's Ace Hardware. The plaintiffs alleged that the liquid stripper was the cause of a basement fire in their residence that resulted in catastrophic burn injuries and disfigurement to the plaintiffs. The case was tried before Judge Tuttmann in Middlesex County.

The plaintiffs were husband and wife. At the time of the fire, the husband was a 46 year old banker and his wife a 46 year old nurse. They claimed that the plaintiff wife was in the basement of her home sewing when she was suddenly engulfed in flames from a flash fire caused by vapors evaporating from a highly flammable liquid paint stripper. They claimed that the liquid stripper was the only flammable liquid stored in the basement at the time of the fire.

The plaintiffs' claims against the defendants were for breach of implied warranty of merchantability and for negligence. They alleged that the liquid stripper was defective by design rendering it unreasonably dangerous. In addition, they alleged that the defendants failed to warn the plaintiffs of the inherent hazards of the liquid stripper, claiming that the warnings on the label were inadequate. The plaintiffs had an additional claim against the defendant distributor and retailer for breach of express warranty. The plaintiffs offered evidence of a "safer alternative" product. The defendants were able to refute this by distinguishing the use of the product and demonstrating market demands for the product.

There were numerous fact witnesses and expert witnesses called by each side. There was a very significant fact dispute about the circumstances that lead up to the fire. This dispute also played a part in the validity of the "cause and origin" analysis. The plaintiffs primarily relied on the testimony of the State Fire Marshall, who, based on his investigation of the fire along with the Norwood Fire Department, concluded that the fire started as the result of vapors from the liquid stripper being ignited by the pilot light of the hot water heater located in the basement. In addition, the plaintiffs offered the expert testimony of chemist, Carl J. Abraham, Ph.D. who testified that the vapors from the liquid stripper, which are heavier than air, concentrated at the floor level of the basement where the pilot light of the hot water heater was located in further support of their claim. In contrast to the defense experts on "cause and origin", neither of the plaintiffs experts offered testing to prove the hypothesis that the plaintiffs asked the jury to accept.

There was extensive testimony by the plaintiffs' treating surgeon about the plaintiffs' injuries and treatment, and by the plaintiffs' experts, William H. Burke, Ph.D. and Dana Hewins, Ph.D. about the plaintiff wife's rehabilitation and life care plan and her loss of future earnings. The plaintiff wife sustained burn injuries over approximately 50% of her body and required 14 surgeries that involved burn revision, grafting, liposuction and tissue expansion. Her medical expenses and future anticipated medical expenses totaled approximately \$1.5 Million. She was unable to return to work as a Licensed Practical Nurse, and her lost wages and anticipated loss of future earnings totaled approximately \$2.5 Million. The plaintiff husband sustained burn injuries to his lower extremities only. His medical expenses totaled approximately \$80,000.00.

The defense offered evidence that the warnings on the liquid stripper complied with the applicable federal laws and regulations and, thus, those claims were pre-empted by federal law. Judge Tuttmann dismissed the plaintiffs' failure to warn claims on directed verdict, along with the plaintiffs' claim for breach express warranty. In addition, the defense offered both fact and expert testimony to refute the plaintiffs' position that the liquid stripper was the cause of the fire. Specifically, the defense offered expert testimony supported by laboratory testing that an insufficient quantity of vapors evaporated from the liquid stripper to cause the primary ignition under the conditions of the basement as described by the plaintiffs.

The trial, including jury deliberations, lasted approximately five weeks. At the conclusion of the case, the jury returned a defense verdict.