

Missouri Lawyers WEEKLY

www.molawyersmedia.com

Stroke victim burned in bed wins settlement

Jury assessed 65 percent of fault to smoker



James G. Krispin

A woman wrapped herself in more warmth than she bargained for on a cold morning two years ago, prompting a \$2 million verdict in her favor in a federal jury trial in Kansas City.

The jury assessed 65 percent of the fault to the plaintiff, making her final award for compensatory damages \$700,000.

The stroke victim from Gravois Mills, whose left side was paralyzed 10 years earlier, fell asleep under a Sunbeam Products Inc. electric blanket on Oct. 28, 2008, when the blanket ignited, causing severe burns to more than one-third of her body. She lost part of her left arm and left breast as a result of the burns.

The local fire chief determined the fire's origin came from the plaintiff's own cigarette, which she smoked in bed, but Barbara Kay's attorneys argued that Sunbeam's blanket was defective and instead triggered the blaze.

Federal jurors on June 24 awarded a \$2 million verdict after a four-day product liability trial. The jury found for Kay on negligence and product liability counts. The jury assessed 35 percent of the fault to Sunbeam and found for Sunbeam on a loss of consortium claim from Kay's

husband, James Kay.

Compensatory damages didn't include a request for future medical damages since, after her recovery, the burns weren't expected to worsen the overall health of the woman, who was in her 70s and already confined to her bed because of the stroke, said plaintiffs' attorney James Krispin, of Clayton.

While jurors deliberated an additional award of punitive damages, the parties reached a confidential settlement.

"She was a smoker, and there were all sorts of remains left in the bed ... and we had to overcome that," Krispin said.

Sunbeam's main defense relied on the fire chief's conclusion that smoking caused the fire. Sunbeam also contended that the product's instructions warn that people who are immobilized should not use the blanket and that Kay didn't use the blanket properly.

"Sunbeam Product Inc. is committed to providing quality consumer goods and stands

behind its heated bedding products. Sunbeam disagrees with the jury's verdict," Sunbeam's local attorney, Deborah Moeller, wrote in a statement.

Moeller is a partner with Shook, Hardy & Bacon in Kansas City.

Krispin said the plaintiff's case also had to overcome the defense's emphasis on previous medical records that showed Kay had suffered from cigarette burns while in bed before the morning of the blanket fire.

At trial, Krispin said a witness tried to ignite different Sunbeam blankets with 15 different brands of lit cigarettes but in none of the cases could start a fire. Krispin said he emphasized to jurors that Kay fell asleep at 2:45 that morning, but the fire didn't wake her until at least three hours later.

"It wouldn't have smoldered for three hours," Krispin said of the cigarette.

John Reagan, an electrical engineer retained by plaintiff's counsel, testified that a "parting arc" within the blanket's heat-

ing element caused the fire. The defendant's electrical engineering expert, Richard Blanchard, countered that the safety circuit for the blanket was found to have been operating properly in laboratory testing.

The plaintiff claimed in her April 2009 petition, "Since the early stages of the development of this electric blanket heating element technology, it was known to Sunbeam that under conditions of normal and reasonably expected use, and even some conditions of normal and reasonably expected misuse of this product, conditions could develop that would place users at risk of a fire occurring in the product."

Officials for Florida-based Sunbeam, which now lists "Wrap yourself in warmth this season" as a slogan for its electric bedding products on its website, declined an interview. A spokeswoman for its parent company, Jarden Consumer Solutions, didn't return a phone call.

— Alyson E. Raletz

\$2M verdict/confidential settlement

PRODUCT LIABILITY, NEGLIGENCE

■ **Court:** U.S. District Court for the Western District of Missouri in Kansas City

■ **Case Number/Date:** 2:09-cv-4065/June 24, 2010

■ **Judge:** Nanette Laughrey

■ **Plaintiffs' experts:** W.T. Cronenwett, Norman, Okla. (product technology analysis, electrical engineering); John Reagan, Wentzville (product technology analysis, electrical engineering); Ronald Gronemeyer, St. Louis (fire cause and origin); Dr. Nicholas Meyer, Columbia (trauma and brain surgery)

■ **Defendant's expert:** Richard Blanchard, Menlo Park, Calif. (product analysis, electrical engineering)

■ **Caption:** Barbara Kay and James Kay v. Sunbeam Products Inc.

■ **Plaintiffs' Attorneys:** James Krispin, Clayton; George McLaughlin, Burg Simpson Eldredge Hersh & Jardine, Englewood, Colo.

■ **Defendant's Attorneys:** Stephen Moffett, Vitu Lascoe & Packus, Birmingham, Mich.; Deborah Moeller, Shook, Hardy & Bacon, Kansas City