

**IN THE CIRCUIT COURT OF FARRAH
COUNTY STATE OF ROOSEVELT**

DAVID OTIS WILSON and)	
DEBRA B. WILSON,)	
Plaintiffs,)	Civil No. YR-4-1001
v.)	
)	
THE ROE CHEMICAL COMPANY,)	
INC.,)	
Defendant.)	
)	

JURY INSTRUCTIONS

(In addition to the customary charges given in any civil action involving issues of tort liability such as weight of evidence, burden of proof, etc., the following specific charges have been approved by the court and will be read in full.)

1. It is the law that the manufacturer, supplier, or seller who markets a product which is in a condition unreasonably dangerous to the ultimate user or consumer when placed on the market and which remains in substantially the same condition until used by the ultimate user is liable to one who may be reasonably expected to use or be affected by such product when used for its intended use and who is injured as a proximate consequence of the unreasonably dangerous product.
2. The plaintiff charges (1) that he suffered injury or damages to himself proximately caused (2) by one who sold a product in a (3) defective condition or which was unreasonably dangerous (4) to him as the ultimate user or consumer and (5) that the seller was engaged in the business of selling such a product and that (6) the product was expected to, and did, reach the user and consumer without substantial change in the condition in which it was sold.
3. The plaintiff charges that the weed killer and its container were defective in manufacturing and design and were used as they were intended or were reasonably foreseeable to be used. Defective means unreasonably dangerous.
4. A defect is that which makes the product unreasonably dangerous. Unreasonably dangerous means the product sold must be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who buys it.
5. An act or omission is a proximate cause of an injury if it was a substantial factor in bringing about the injury; that is, if it had such an effect in producing the injury that reasonable men would regard it as a cause of the injury.

6. The plaintiff also charges that such product and the container in which it was sold was defective in its warning and instructions. When a seller or manufacturer has reason to anticipate that damage may result from a particular use, he may be required to give adequate warning of the danger, and a product sold without such warning is in a defective condition.
7. Where a product contains ingredients to which a substantial number of the population are allergic and ingredients are those whose danger is not generally known, or if known is one which consumers would reasonably not expect to find in a product, the seller is required to give warning against it if he has knowledge of the danger.
8. The seller and manufacturer of a product whose use could result in foreseeable harm has a duty to give a warning which adequately advises the user of the attendant risks and which provides specific directions for safe use.
9. The warning must adequately indicate the scope of the danger and must reasonably communicate the extent or seriousness of harm that could result.
10. Failure to give adequate warnings renders the product unreasonably dangerous.
11. The manufacturer must also provide sufficient instructions with the product to permit it to be used with reasonable safety. Supplying even adequate instructions will not satisfy the manufacturer's duty to warn if the user is not hereby alerted to the hidden dangers in the product.
12. A manufacturer or other defendant whose product is accompanied by warnings or instructions, is entitled to assume that appropriately worded warnings or instructions will be heeded by those who receive them.
13. It is a question of fact for the jury whether particular warnings or instructions are appropriately worded.
14. The law places the burden on the plaintiff to reasonably satisfy you of the truthfulness of each of the material elements of his claim. If you are not reasonably satisfied that the plaintiff has met this burden, then you will find that the defendant is not liable. If, however, you are reasonably satisfied that the plaintiff has met the burden of proving the material elements of his claim, then you will consider the following affirmative defense asserted by the defendant.
15. The defendant contends that the plaintiff was comparatively at fault. Comparative fault is negligence on the part of the plaintiff which combining with a defect in a product contributes as a proximate cause in bringing about the injury.
16. Comparative fault, if any, on the part of the plaintiff does not bar recovery by plaintiff against the defendant, but the total amount of damages to which plaintiff would

otherwise be entitled shall be reduced by the percentage that the plaintiff's comparative fault contributed as a proximate cause of his injury.

17. If the plaintiff is more than 50% at fault, he is barred from recovery.
18. The negligence of the plaintiff, David Wilson, does not reduce or bar Debra Wilson's recovery, if you find the defendant at least 1% at fault and that she suffered damages.
19. Negligence is the doing of something which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, under circumstances similar to those shown by the evidence. It is the failure to use ordinary or reasonable care.
20. It is the law that mere compliance with federal statutes, regulations, or agencies is not a complete defense to a manufacturer or seller.

If after a consideration of all the evidence in this case, you are not reasonably satisfied of the truthfulness of the plaintiffs' claim, your verdict should be for the defendant. This would end your deliberations. On the other hand, if after a consideration of all the evidence in the case you are reasonably satisfied of the truthfulness of the plaintiffs' claim, your verdict should be for the plaintiffs with said award to be reduced by the plaintiffs' comparative fault, if any. If you so find, it will be necessary for you to arrive at an amount to be awarded in the verdict from which I will read to you and describe later in my charge.

I now give you the following rules of law to assist you in your deliberations in arriving at an amount in the event you find for the plaintiffs.

21. The plaintiffs seek compensatory damages. Under our law, the parties are not entitled to recover so-called punitive damages in this action. The purpose of awarding compensatory damages is to fairly and reasonably compensate the injured party for the loss or injury sustained. Compensatory damages are intended as money compensation to the party wronged, to compensate him for his injury and other damages which have been inflicted upon him as a proximate result of the wrong complained of.
22. The measure of damages for medical expenses is all the reasonable expenses necessarily incurred for doctors' and medical bills which the plaintiff has paid or become obligated to pay and the amount of the reasonable expenses of medical care, treatment, and services reasonably certain to be required in the future. The reasonableness of, and the necessity for, such expenses are matters for your determination from the evidence.
23. In determining the amount of damages for loss of earnings, you should consider any evidence of the plaintiff's earning capacity, his earnings, the manner in which he ordinarily occupied his time before the injury, and his inability to pursue his

occupation, and determine what he was reasonably certain to have earned during the time so lost, had he not been disabled.

24. It is for you to determine from the evidence the nature, extent and duration of the injuries of the plaintiff, David Otis Wilson. If you are reasonably satisfied from the evidence that the plaintiff David Otis Wilson has suffered permanent injuries and that such injuries proximately resulted from the wrongs complained of, then you should include in your verdict such sum as you determine to be reasonable compensation for such injuries.
25. The law has no fixed monetary standard to compensate for physical pain and mental anguish. This element of damage is left to your good sound judgment and discretion as to what amount would reasonably and fairly compensate the plaintiff David Otis Wilson for such physical pain and mental anguish as you find from the evidence the plaintiff did suffer. If you are reasonably satisfied that the evidence that the plaintiff David Otis Wilson has undergone, or will undergo, pain and suffering or mental anguish as a proximate result of the injury in question, you should award a sum which will reasonably and fairly compensate him for such pain, suffering, or mental anguish already suffered by him and for any pain, suffering, or mental anguish which you are reasonably satisfied from the evidence that he is reasonably certain to suffer in the future.
26. Debra B. Wilson has also brought this suit. She claims loss of consortium. If you find for the plaintiff, Debra Wilson, you may also determine the amount of money that will reasonably compensate her for any damages sustained by loss of her husband's company, fellowship, cooperation, and assistance in the marital relationship as a partner in the family unit. Loss of consortium includes the impaired ability of her husband to perform his usual services in the care of the home (and in the education and rearing of the children), as well as her loss of his society, companionship, and comfort, taking into account the length of time of such loss and the reasonably certain duration of any future loss of consortium.
27. Mrs. Wilson has also made a claim for loss of future earning capacity. In determining a claim for loss of future earning capacity you must consider the reasonableness of the plaintiff's claim and the likelihood that the plaintiff would have completed her educational requirements and would have competed in the job market.