

Wilson, et al. v. The Roe Chemical Company, Inc.

STATEMENT OF CASE

The Defendant, The Roe Chemical Company, Inc., produces and sells a liquid weed killer called Pre-Merge Dinitro. It is manufactured and sold in five-gallon containers. Its net profits were \$20 million in the most recent fiscal year and 100% of its profits are derived from sales of products manufactured at its facility in Franklin. At the time of the accident, David Wilson was a 49 year-old farmer. He bought the product from defendant's outlet store. While attempting to pour from the container, either the container or the plaintiff slipped and the weed killer splashed over his body. He was diagnosed with a progressive nerve and muscle disease. Wilson sued the Defendant under the State of Roosevelt's product liability statute, which allows the fault-based defense of comparative negligence with a finding of 51% negligence on the part of the plaintiff being a bar to recovery. The statute and case law provide for a "risk utility" analysis and defense. The applicable statute of limitations is three years.

The Plaintiff bases his claims on Defendant's failure to warn, i.e., the Defendant's warnings on the label attached to the container were inadequate and the container was defectively designed and therefore was unreasonably dangerous for its intended and foreseeable uses. Defendant Roe denies that the product was in a defectively designed container and that the warning was inadequate, and Defendant asserts the defense of comparative negligence. Plaintiff seeks recovery of medical expenses, impaired earning capacity, physical and mental pain and suffering, loss of enjoyment of life, and punitive damages. Plaintiff's wife, Debra Wilson, also brings a claim for loss of consortium.

Roosevelt's case law provides that federal labeling statutes do not pre-empt state tort claims based on inadequate warnings or instructions. It also provides that a defendant is entitled to a presumption that a warning or instruction that is provided will be heeded by its recipient (a jury instruction will be given on this issue). This presumption is rebuttable.

Evidence indicates that the subject container was shipped from the factory almost two months prior to Plaintiff's purchase. During this interim shipping period, but prior to Plaintiff's purchase, Roe decided to change the label to include additional language concerning the danger of absorption. The state evidentiary rule with respect to subsequent remedial measures mirrors the Federal Rules of Evidence. State law does not permit bifurcation as a matter of right. It is discretionary with the court on motion by either party.