

IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

FILED

DYANNE LEWIS, ON BEHALF OF THE
WRONGFUL DEATH BENEFICIARIES OF
LINDA WHITE

JUN 23 2011

BARBARA DUNN, CIRCUIT CLERK PLAINTIFF

BY _____ D.C.

VS.

CIVIL ACTION NO.: 251-07-361 CIV

COMBINED SYSTEMS, INC.,
AND JOHN DOES 1-13

DEFENDANTS

OPINION AND ORDER

THIS CAUSE came on to be heard before the Honorable Winston L. Kidd, Hinds County Circuit Court Judge, sitting without a jury. A stipulation was made wherein both parties waived their respective rights to a trial by jury. Having announced their readiness for trial, the parties presented their respective testimony and evidence to the Court.

The issue herein is whether the Defendant, Combined Systems, Inc., knew of potentially fatal consequences of exposure to its product by vulnerable individuals and, with that knowledge, sold its products without proper warning. Further, there is an issue as to whether any failure to warn was a proximate cause of the death of Mrs. Linda White.

During a standoff with local youth, the Jackson Police Department SWAT team deployed Oleoresin Capsicum (OC) powder and Chlorobenzalamalononitrile (CS) gas into Ms. White's home. Once the standoff came to an end, the home was evacuated and ventilated to resume regular human dwelling. Days after, Linda White died from complications related to a chemical lung injury from which a case of Acute Respiratory Distress Syndrome developed.

The Plaintiff contends that Ms. White's death was a result of chemical exposure to the OC

powder and CS gas fumes in her home during the days following the standoff. The Plaintiff attributes the exposure to a failure to warn on behalf of the defendant that resulted in an improperly trained police force using such deadly chemicals to the detriment of Ms. White.

The Defendant contends that the decedent had a preexisting condition that was the proximate cause of her death which would absolve Combined Systems of any liability and, further, that the Jackson Police Department was a learned intermediary and their negligence alone constitutes 100% of the liability for the death of Ms. White.

FINDINGS OF FACT

The Incident

1. On Wednesday, April 26, 2006, a standoff occurred between the Jackson Police Department's SWAT team and three Jackson youths at 3168 Longwood Drive, Jackson, MS.
2. Linda White was the owner of the residence located at 3168 Longwood Drive.
3. The individuals inside the house at the time of the standoff were not related to Ms. Linda White and did not have Ms. White's permission to be in her house or on her property.
4. During the standoff, the Jackson Police Department Swat team deployed Oleoresin Capsicum (OC) powder and Chlorobenzalamalononitrile (CS) gas into the house at 3168 Longwood Drive.
5. The OC powder and CS gas deployed was produced and manufactured by Combined Systems, Inc.
6. Combined Systems, Inc., offered training on the use of CS gas and OC powder to the Jackson Police Department through Officer James Chambers in 2002.

7. After the suspects were removed, the Jackson Police Department SWAT team did not perform an adequate decontamination of the house at 3186 Longwood Drive.

8. A projectile fired into the house by the Jackson Police Department SWAT team, was recovered in the 3186 Longwood Drive house more than a year later.

9. Ms. White returned to, and entered the house at least four times over the next four days following the standoff.

Medical Findings

10. Ms. White suffered breathing problems including, but not limited to, shortness of breath due to her exposure to the gases and their residues.

11. On May 1, after being in the house, Ms. White was taken to the University Medical Center (UMMC) and was subsequently diagnosed with a lung injury.

12. Ms. White's lung injury developed into Acute Respiratory Distress Syndrome (ARDS). ARDS is a condition that can develop from chemical pneumonitis or chemical lung injuries.

13. The following day Ms. White's condition worsened and she was placed in the Intensive Care Unit (ICU) where she remained until her death on May 8, 2006.

14. After her death, an autopsy was performed by Dr. Jonathan Fratkin at UMMC. The autopsy revealed that Ms. White suffered from diffuse alveolar damage. Dr. Fratkin testified that cavitation of the lung was not found in autopsy. He further testified that cavitation of the lung would indicate a severe infection and is common with MRSA. Dr. Fratkin opined that this is consistent with exposure to CS gas and OC powder and that the damage to Ms. White's lungs, found in the autopsy, was similar to people who had suffered a high exposure to CS gas and OC powder. Finally,

Dr. Fratkin testified that the chemical exposure was a significant role in the death of Linda White and that the literature supports the possibility of a low level exposure that developed a delayed reaction.

15. Dr. David N. Reifsnyder, an expert witness in the field of infectious diseases testified by a deposition at trial. Dr. Reifsnyder testified that although Ms. White was a carrier of MRSA, she was not infected with MRSA and never developed MRSA pneumonia.

16. Dr. Brent Brown testified that repeated exposures, the continuing contamination from the clothing of Ms. White and the combination of both OC powder and CS gas led to Ms. White suffering a lung injury. Dr. Brown further opined that the findings in the lungs are more consistent with a chemical injury rather than an infection.

The Victim and Beneficiaries

17. After the death of Linda White, Dianne Lewis was appointed administratrix of Linda White's estate.

18. At the time of her death, Ms. White was forty-two years old and employed by Ms. Pat Shepard. In the prior year, Ms. White reported an adjusted gross income of fifteen thousand six hundred and seventy four dollars (\$15,674.00). At the time of her death, Ms. White was not married and was survived by five children, Lakeisha White, Saisha White, LaEbony White, Damion White, and Edward White.

19. At the time of her death, Ms. White suffered from diabetes and high blood pressure. Testimony from her children revealed that Ms. White neither drank alcohol nor smoked tobacco. They also indicated that Ms. White's only form of exercise was walking around the house.

20. Testimony at trial revealed that Ms. White had a very close relationship with her children. Additionally, her children testified that they missed their mother a great deal and had experienced depression as a result of their mother's death.

21. As a result of her hospitalization, there is a bill from UMMC in the amount of fifty-four thousand, seventy eight dollars and seventy-six cents (\$54,078.76).

22. The funeral expenses of Linda White were five thousand, nine hundred and ninety-eight dollars (\$5,998.00).

Warnings

23. Officer James Chambers was trained by Combined Systems, Inc., Inc. to be the trainer for the entire Jackson Police Department SWAT team. During his testimony, Officer Chambers could not remember any decontamination procedures outlined in the training by Combined Systems, Inc. Further, he could not remember any discussion of the lethality of CS gas or OC powder in the training by Combined Systems, Inc. He specifically stated that he did not remember being told that inhalation of the gases would cause death; did not remember if he told his JPD officers that inhalants of the gas could be lethal; and did not remember being trained in decontamination procedures.

24. Combined Systems, Inc. is aware of a formula that calculates the lethality levels of CS gas and is further aware of studies that document the lethality of CS gas. Testimony revealed that Combined Systems sells OC Powder and CS gas as non lethal. Further, Combined Systems tells its clients that OC Powder and CS gas are non lethal.

25. Testimony at trial revealed that Combined Systems does not employ a human factors expert to design any of its warning material. Combined Systems did not employ a human factors expert to design any of its training material. Further, Combined Systems, Inc. did not employ any

individual whose duty it is to keep up with advances in literature in the safety of OC powder or CS gas.

26. The OC powder had one warning attached to the grenade. The CS gas had one warning on the material. Combined Systems, Inc. does not give any warnings relating to use of CS gas on people with pre-existing medical conditions even though Combined Systems is aware that there are medical conditions that can be aggravated by CS gas. Finally, Combined Systems, Inc. does not require its sales staff to participate in any training on the effects or dangers of its products.

27. Combined Systems, Inc. put on the testimony of Dr. Robert Cox who was a physician whose specialties are emergency medicine and medical toxicology, and who gave some care to Ms. Linda White while she was at UMMC. A dispute arose as to whether Dr. Cox was properly designated as an expert by Combined Systems, Inc. The Court finds that it is not necessary to accept Dr. Cox as expert in that the only relevant opinion would be related to his treatment of Ms. Lewis. Dr. Cox testified that it is his opinion that inhalants did not play a role in Ms. Lewis' death.

28. Combined Systems, Inc.'s own expert Dr. Bennett P. Deboisblanc stated that the shadows on the lungs of Linda White could be due to a chemical injury.

29. Combined Systems, Inc.'s expert Dr. Rhoades testified the training material provided by Combined Systems, Inc. were not instructions in decontamination but alternatives or approaches. Dr. Rhodes testified that Police Departments are more likely to follow warnings and instructions better than the average public.

30. According to human factors expert Dr. Nathan Dorris, the warnings provided by Combined Systems, Inc. on the OC powder and the CS gas were inadequate. Dr. Dorris opined that proper warnings by Combined Systems, Inc. would have changed the behavior of Jackson Police

Department SWAT.

31. Combined Systems, Inc. breached the express warranty by selling OC powder and CS gas as non lethal when Combined Systems, Inc. knew these products could cause death. Combined Systems provided inadequate warnings for the CS gas sold to the city of Jackson and in the use thereof.

32. Combined Systems, Inc. knew that these products had lethal levels and still represented and sold them as non-lethal. The actions of Combined Systems, Inc. were negligent as they attempted to conceal the lethality of the products involved herein.

33. Combined Systems, Inc. is strictly liable for its breach of an express warranty pursuant to Miss. Code Ann. §11-1-63, as amended.

34. Combined Systems, Inc. breached its implied warranty of merchantability.

CONCLUSIONS OF LAW

The Supreme Court of Mississippi has recognized that a lack of adequate warning may constitute a defect rendering a product unreasonably dangerous. Swan v. I.P., Inc., 613 So.2d 846, 851 (Miss. 1993). Like a majority of other jurisdictions, Mississippi has applied what is essentially a negligence analysis in cases alleging a failure to warn. O'Flynn v. Owens-Corning Fiberglas, 759 So.2d 526-534-35 (Miss. Ct. App. 2000).

The Mississippi Products Liability Act also follows the negligence based analysis applied in common law failure to warn cases. Miss. Code Ann. §11-1-63(c); See also Noah v. General Motors Corp., 882 So.2d 235, 239 (Miss. Ct. App. 2004). In O'Flynn v. Owens-Corning Fiberglas, the Mississippi Court of Appeals stated:

In order to recover in a failure to warn cause of action, the plaintiff has to prove that the manufacturer or seller knew or had reason to know of the hazard or risk associated with the product about which it failed to warn. In proving the foregoing, the plaintiff is in effect proving that the defendant was negligent in its failure to warn. Hence, even though the cause of action for failure to warn could be based on negligence or strict liability in tort, the two theories, while conceptually different, often merge into a single breach of duty.

Id. (citation omitted).

In Swan v. I.P., Inc. the Supreme Court of Mississippi further held that "[o]ne who supplies a chattel to others to use for any purpose is under a duty to exercise reasonable care to inform them of its dangerous character in so far as it is known to him." 613 So.2d at 851. The Mississippi Products Liability Act likewise states, in pertinent part, that:

(c)(i) In any action alleging that a product is defective because it failed to contain adequate warnings or instructions pursuant to paragraph (a)(i)2 of this section, the manufacturer or seller shall not be liable if the claimant does not prove by the preponderance of the evidence that at the time the product left the control of the manufacturer or seller, the manufacturer or seller knew or in light of reasonably available knowledge should have known about the danger that caused the damage for which recovery is sought and that the ordinary user or consumer would not realize its dangerous condition.

Miss. Code Ann. §11-1-63(c)(i).

The Plaintiff has shown by a preponderance of the evidence that Combined Systems, Inc.'s negligence and breach of warranties in connection with Ms. White's exposure to OC powder and CS gas, proximately caused the death of Linda White.

The Plaintiff has shown, by a preponderance of the evidence, that Combined Systems, Inc. breached the following warranties: strict liability, breach of express warranty, breach of implied warranty, by selling these products as "non-lethal" or "less-than-lethal" with full knowledge that these products could cause death.

The Plaintiff has also shown by a preponderance of the evidence that Combined Systems,

Inc.'s negligence in failing to warn the City of Jackson Police Department and/or Linda White regarding the lethal nature of the OC powder and CS gas used, the potential to cause death or injury for those with pre-existing conditions, and the inadequate warnings and/or training given to the City of Jackson regarding decontamination of structures and continuous exposure.

Defendant's argument that the Jackson Police Department was a learned intermediary fails in light of their failure to adequately warn.

DAMAGES

From the time of exposure, Linda White lived an additional ten days, with episodes of wheezing until her coma. Her pain continued intermittently until her death. Damages for the estate of Linda White; specifically including, but not limited to, hospitalization, pain and suffering for the eight days, and death amount to \$500,000.00. Additionally, the Court finds that it is appropriate to award damages to each of Linda White's beneficiaries. Damages are as follows:

Damages for Lakeisha White - specifically including, but not limited to wrongful death, mental anguish, and loss of society: \$400,000.00.

Damages for Dameon White - specifically including, but not limited to wrongful death, mental anguish, and loss of society: \$400,000.00.

Damages for LaEbony White - specifically including, but not limited to wrongful death, mental anguish, and loss of society: \$400,000.00.

Damages for Saisha White - specifically including, but not limited to wrongful death, mental anguish, and loss of society: \$400,000.00.

Damages for Edward White - specifically including, but not limited to wrongful death, mental anguish, and loss of society: \$100,000.00

Total Compensatory Damages = \$2,200,000.00

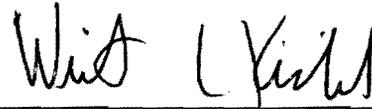
Based upon the above, the Court assesses damages in this case at \$2,200,000.00. However, the Court must acknowledge the negligence of City of Jackson's Police Department for which the Court will assess their fault to be 50%. The remaining 50% shall be assessed against the defendant herein. Therefore, the Court finds for the Plaintiff and awards damages in the amount of \$1,100,000.00 against the Defendant.

Finally, based upon the evidence presented at trial, the Court finds that the plaintiff's claim for Punitive Damages is hereby dismissed.

IT IS, THEREFORE, ORDERED AND ADJUDGED that a Judgment shall be entered in favor of the Plaintiff and against the Defendant in the amount of \$1,100,000.00.

IT IS FURTHER ORDERED AND ADJUDGED that on or before July 5, 2011, the plaintiff shall submit a proposed Judgment setting forth the damages awarded herein.

SO ORDERED AND ADJUDGED this the 23rd day of June, 2011.



WINSTON L. KIDD
CIRCUIT COURT JUDGE