

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JO ETTA and MICHAEL LEDGERWOOD,

Plaintiffs,

v.

DIAL INDUSTRIAL SALES, INC.,
HARTFORD CASUALTY INSURANCE CO.,
and ST. PAUL SURPLUS LINES,

Defendants.

ORDER

04-C-200-C

A final pretrial conference was held in this case on February 12, 2004, before United States Magistrate Judge Stephen L. Crocker. Plaintiffs and defendant Dial Industrial Sales, Inc. appeared by counsel.

At the conference, Judge Crocker announced the court's preliminary rulings on the parties' motions in limine and directed the parties to notify the court in writing by Tuesday, September 6, 2005, if they wished to contest any of the rulings. I have received letters from plaintiffs and from defendant Dial Industrial Sales, Inc. challenging the preliminary ruling on plaintiffs' motion in limine #4 and defendant's motion in limine #5. I have considered those submissions in making the following final pre-trial rulings:

Plaintiff's Motions in Limine

1. Plaintiffs' motion to exclude Joe Musto's testimony, videotapes and written reports regarding the testing of ladders other than Telesteps ladders is DENIED in part and GRANTED in part. Defendants may use Joe Musto's testimony, videotapes and reports to compare the design safety of Telesteps ladders with the design safety of other ladders on the market. However, defendants may not use Joe Musto's testimony, videotapes or reports showing the performance of any non-Telesteps ladder as evidence of how the Telesteps ladder performed on the day of the accident.

2. Plaintiffs' motion to exclude any opinions supplied by Thomas Bundorf concerning the position of Jo Etta Ledgerwood's ladder at the time of her accident is DENIED. Plaintiffs may attack the credibility of the witness's testimony, but since it meets the requirements of expert testimony under Rule 702, it will not be excluded

3. Plaintiffs' motion to exclude any reference to an attempt at suicide by Jo Etta Ledgerwood more than thirty years ago is GRANTED. The evidence is irrelevant to this trial.

4. Plaintiffs' motion to permit evidence of similar slide out occurrences, accidents, lawsuits, claims, etc involving the Telesteps ladder and occurring prior to June 20, 2002 is GRANTED. Evidence regarding other accidents involving the Telesteps ladder that occurred prior to plaintiff Jo Etta Ledgerwood's accident is relevant to whether defendants had notice

of the ladder's alleged design defect. The arguments defendants raise in their request for reconsideration of this ruling are the basis for cross-examination, not exclusion of the evidence.

5. Plaintiffs' motion to permit testimony that Jo Etta Ledgerwood has been determined to be totally disabled for social security standards and is receiving social security benefits at this time is GRANTED with respect to the damages phase of the bifurcated trial.

6. Plaintiffs' motion to permit Officer Dennis Chadwick to provide his lay explanation of how the ladder arrived at the position in which he found it when he responded to the accident scene is DENIED. Plaintiffs indicate that Officer Chadwick is "an investigating officer trained to investigate accidents." To qualify as a lay opinion under Rule 701, Officer Chadwick's opinion cannot be based on technical or other specialized knowledge. I will not allow an quasi-expert opinion to be the subject of testimony by a witness not previously disclosed as an expert.

Defendants' Motions in Limine

1. Defendant's motion to exclude all testimony of plaintiffs' expert witness Lila Laux is DENIED. Defendants' challenges to Laux's credibility are grounds for cross-examination, not exclusion of the witness's testimony.

2. Defendant's motion to exclude all evidence of defendant's duty to warn is

DENIED. Defendant's request for summary judgment on this issue was previously denied in the court's order dated February 17, 2005 (dkt # 77).

3. Defendant's motion to exclude all evidence of "other accidents" involving the Telesteps ladder is GRANTED in part and DENIED in part. No evidence will be admitted relating to accidents involving the Telesteps ladder that occurred after June 20, 2002. However, evidence of accidents involving the Telesteps ladder that occurred prior to June 20, 2002 is relevant to whether or not defendants had notice of the ladder's alleged design defect and will be admitted for that purpose. (See Plaintiff's Motion in Limine #4, above.)

4. Defendant's motion to exclude evidence of another accident as shown in plaintiffs' QVC videotape is GRANTED. Plaintiffs have provided no foundation for the admission of this tape or its relevance to the issues in this case.

5. Defendant's motion to exclude the testimony of David Erickson because he was not disclosed as an expert before the deadline provided in the preliminary conference pretrial order is GRANTED. Although plaintiffs have asserted that they first identified Erickson as a potential witness in August 2005, defendant has demonstrated that Erickson's identity was

disclosed in a letter given to plaintiffs in October 2004.

Entered this 8th day of September, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge