

C/A 81-157, JIMMO v. SEARS (products liability - personal injury).

Status conf. 7 Nov 1983.

Mrs. JIMMO bought a paint sprayer from Sears and the top of it blew off the first time she used it, striking her in the chest. Her injuries are rather indefinite. A problem: it blew off the first time, then she tried it again, and again it blew off. Is this contributory negligence, being aware of the proclivity of the thing to come unglued???

In my case, Sears has joined Campbell-Hausfeld, manufacturer, who has in turn joined Mirro, evidently a component manufacturer.

The fourth-party complaint against Mirro has been tendered and needs to be ordered filed.

Discovery up to this point has been pursued but I don't know if the parties consider it to be complete at this time.

Plaintiff's late motion for Jury trial has been taken under advisement by the court, and should be decided soon I suppose.

GOOMBA "RIGHT STUFF" PALUMBO

16  
16  
12



TO: Judge  
FROM: Maggie  
DATE: 19 March 1982  
RE: Civil action #81-157

MARIAN JIMMO v. SEARS ROEBUCK and THOMAS NEAL  
Preliminary Conference, Monday at 10:00

Mrs. Jimmo, pro se, is suing Sears and its territorial vice president in this personal injury action.

FACTS: Mrs. Jimmo bought a paint sprayer at the Sears Catalog Store in Pikeville. The first time she used it, the top blew off while she was adjusting the air pressure. When she tried it again, the top blew off again and struck her in the chest.

ISSUES WHICH COULD NOW BE RESOLVED:

1. Defendants say plaintiff's jurisdictional allegation in her complaint is insufficient to invoke our jurisdiction. They're right. You might just ask Sears at the hearing where they're incorporated and where their principal place of business is, and then tell Mrs. Jimmo to amend her complaint again to say those things.
2. Defendant Neal, who is Sears' executive vice president for their Southern Territory, has moved for summary judgment. That was on March 3 and there's been no reply from plaintiff. Although I'm sure plaintiff just didn't know that she was required to respond to the summary judgment motion, I don't think it'd be at all unfair to her to grant defendant Neal his summary judgment. There's no indication anywhere that defendant Neal had any contact with plaintiff, and she never alleges any negligence or wrong-doing on his part.
3. If plaintiff were to decide now that she wants a jury, and if you'd be inclined to invoke your discretionary authority to grant an untimely jury demand, it might move this thing on toward a settlement rather than trial. Just a thought . . .
4. Cut-off date for discovery.
5. Pre-trial and trial dates.

*Jurie  
Neal SP  
discovery  
complaint*