
6/20/01 - Judge JOHN F. KELLY -
CV 335989 - BROGDEN (Philip J. Hall of
Haralson, Miller, Pitt, & McAnally, P.L.C.)
v RENTSCHLER (David L. Curl of Blaser &
Associates); T J MAXX; KELLWOOD
INDUSTRIES; and SAG HARBOR (Michael W.
Capp of MacBan Law Offices; and Michael J.
Goldman of Atlanta, Georgia) - PERSONAL
INJURY - PRODUCT LIABILITY - COTTON
DRESS. Plntf, female, a doctoral candidate,
who had two years of research, plus one year
of writing, left on her thesis, and her husband,
were attending a social gathering, of approxi-
mately one hundred guests, at the home of Dfnt
Rentschler, after a function at his El Presidio
Art Gallery. Guests were both inside, and
outside in the backyard, in the cool night,

throughout the evening. Plntf and her husband were standing near a chimenea, on the back patio, talking. Witnesses attending the function testified the skirt of Plntf's cotton dress caught fire. Plntf attempted to pat out the fire, and then two guests attempted to pat out the fire, but were unable to do so. Another guest ran a distance of ten feet, covered Plntf with his coat, then tackled her to the ground, and put the fire out. A witness testified Plntf's skirt caught fire "as if it had been dipped in kerosene". Plntf called Howard L. Needles, Ph.D., a textiles engineering expert, who was of the opinion the dress, manufactured by Dfnt Kellwood, then sold by Dfnt T J Maxx, was defective and unreasonably dangerous. Dr. Needles testified federal standards were influenced by intense lobbying efforts of the textile industry, when the standards were passed. Dr. Needles showed a videotape of his testing, which showed the material used in the exemplar skirt burned in five to seven seconds. Dr. Needles was also allowed to testify there were two other cases where Dfnt T J Maxx had sold dangerous items of clothing, which had ignited, and he was a witness in one of those cases. Dr. Needles testified Dfnt T J Maxx was fined \$150,000, for selling a rayon product which did not pass federal standards. On cross, Dfnt T J Maxx's attorney pointed out Dr. Needles had testified in a variety of cases, including certain T-shirts sold by Knottsberry Farms, jeans being used with a flame thrower, and materials that were much thicker and less flammable than the dress in question, and opined all were defective and dangerous. Dfnt T J Maxx argued Dr. Needles seemed to be changing his testimony, as to whether the skirt had made contact with the flame or the wood, which was glowing. Plntf also called David M. Smith, C.F.I., a fire investigator, who testified chimeneas should never be used as a warming source. Further, it was Mr. Smith's opinion there were ways to prevent the accident. In Mr. Smith's opinion, the chimenea should never have been used or, if it was used, it should have had a fire screen, it should have been

elevated, or should have been placed in an area inaccessible to people. Also, it was Mr. Smith's opinion the owner should have warned everyone of the fire in the chimenea. Further, Mr. Smith opined, per a review of the literature on chimeneas, that there were no published articles on a chimenea causing clothing to catch fire. Plntf testified she saw wood being put in the chimenea, and was aware of the fire in the chimenea, but felt she stood far enough away to prevent her skirt from being caught in the fire. Further, Plntf alleged she was standing so far away she could barely feel any heat. Plntf admitted she has never stood in front of a chimenea before. Plntf also testified someone told her that her dress was on fire, and she attempted to pat out the flame. On cross, Plntf admitted she continues to buy the same type of one hundred percent cotton clothing. Plntf testified she spent nearly an hour in front of the chimenea and was wearing a sweater, but admitted she never asked anyone to provide her with a coat, and never asked anyone to switch places with her. Plntf agreed she could have moved to another part of the patio, but denied she knew of any other heat sources. Plntf also agreed she testified in her deposition that she did not know if her skirt got into the chimenea, but denied telling doctors at St. Mary's Hospital that she got too close to the chimenea, or that she was leaning over the chimenea. Plntf read certain portions of the deposition of an employee of Dfnt T J Maxx, who stated there is no testing done, by Dfnt T J Maxx, and Dfnt T J Maxx relies on their suppliers to do the testing, and written contracts requiring compliance. Dfnt T J Maxx called Clyde Canter, a textile expert, who testified the skirt in question passed all applicable codes and laws. Further, it was Mr. Canter's opinion that, if Dr. Needles' recommendations were followed, nine percent of all clothing, currently on the market, would be considered illegal. Additionally, it was Mr. Canter's opinion that, if some of Dr. Needles' ideas were implemented, it could affect over fifty percent of the market. Plntf sustained

third-degree burns to thirteen percent of her body, and was taken to St. Mary's Hospital, where she was treated and underwent skin grafts. Plntf used the videotape deposition of Jeffrey M. Nelson, M.D., a plastic surgeon, regarding the treatment and follow-up care, of Plntf's burns. It was Dr. Nelson's opinion Plntf's treatment, including skin grafts, was reasonable and necessary. Plntf's husband testified there were changes in Plntf, in that, she has become more reclusive, since the accident, does not want him to see or touch her, and their marital relations have been adversely affected. Additionally, it was his opinion Plntf does not contribute as much to the cooking, cleaning, and laundry, as she did before the accident. Plntf also used the videotape deposition of her supervisor, who testified Plntf would have been placed on the final list of five for a tenure position, if not for the accident. COURT RULED PLNTF WAS AN INVITEE, AS A MATTER OF LAW, AS OPPOSED TO A SOCIAL GUEST OR LICENSEE. COURT DENIED DFNT'S MOTION FOR DIRECTED VERDICT ON THE ISSUE OF WARNINGS. Prayer: Just and reasonable compensatory damages (D Curl). (Carrier: Unknown.) During closing arguments, Plntf's counsel asked jury to award Plntf \$500,000, plus a fair and reasonable amount to Plntf's husband for loss of consortium. Defense counsel argued liability, arguing the skirt was one of many popular skirts that Dfnts were making and selling like everyone else in the U.S., and the skirts passed all applicable codes and laws, and have never been found to be defective, except in Dr. Needles' opinion. Prayer: Just and reasonable compensatory damages; \$30,000 medical expenses; plus \$3,200 lost wages. Plntf made a pretrial demand for \$250,000 - Dfnt refused to make an offer (D Curl). (Dfnt Rentschler's Carrier: State Farm Insurance; Dfnt T J Maxx's Carrier: Unknown.) Five day trial. Jury out two hours. FOUND FOR DFNTS. UNANIMOUSLY.
