

22421

STATEMENT OF LEGAL ISSUES

1. Whether Plaintiff was entitled to a new trial because defense counsel improperly advised the jury in opening statement that Plaintiff had settled with the Boones' former landlord several years before the trial. THE COURT DENIED THE PLAINTIFF'S MOTION FOR NEW TRIAL.

2. Whether the trial court erred in allowing opinion testimony and argument that careless cigarette smoking was the likely ignition source of the fire. THE COURT ALLOWED THE OPINION TESTIMONY AND ARGUMENT TO BE HEARD BY THE JURY.

3. Whether the trial court erred in denying Plaintiff's request to present evidence explaining the absence at trial of two items of partially burned property retrieved from the fire scene and in giving Instruction 41 (SD Pattern Jury Instr. 5-01-2). THE COURT DENIED THE REQUEST TO PRESENT ANY EXPLANATORY EVIDENCE AND GAVE THE INSTRUCTION.

4. Whether the trial court erred in defining “defective condition” in Instruction 30 by combining both SD Pattern Jury Instr. 150-02-1 and 150-02-2 without further explanation or guidance to the jury. THE COURT GAVE INSTRUCTION 30 WITH A COMBINED DEFINITION.

5. Whether the trial court erred in giving Instruction 34, which declared that Defendant was relieved of any duty to warn when the danger associated with its product was “obvious or actually known” to Daniel Boone. THE COURT GAVE THE INSTRUCTION.

6. Whether the trial court improperly refused to give a limiting instruction on the use of prior inconsistent statements and improperly allowed the defendant to use the prior inconsistent statement as substantive evidence. THE COURT REFUSED TO GIVE A LIMITING OR EXPLANATORY INSTRUCTION.

7. Whether the trial court erred in excluding evidence of Kolcraft’s subsequent remedial measures on the ground that this evidence would “unduly delay” the trial. THE COURT EXCLUDED EVIDENCE OF SUBSEQUENT REMEDIAL MEASURES.

8. Whether the trial court erred in allowing the Defendant to raise the issue of the smoke detector without proper foundation and then to argue what was, in effect, a contributory negligence defense. THE COURT ALLOWED THE DEFENDANT TO RAISE AND ARGUE THE SMOKE DETECTOR ISSUE.

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STATEMENT OF THE ISSUE – NOTICE OF REVIEW

1. Did the circuit court err when it denied Kolcraft's motion for directed verdict on the issue of whether Kolcraft's product was the proximate cause of Daniel Boone's injuries?