

# Products Liability Case of the Month - February 2003

February 20, 2003

Florida's 15th Judicial Circuit (Palm Beach County) set aside a jury verdict against a gun distributor in a highly publicized wrongful death case brought by the family of a teacher who was shot by a student. The student, Nathaniel Brazill, was led off-campus by security after being suspended. Brazill went to his uncle's home and stole his uncle's .25 caliber Raven MP-25 pistol. Brazill returned to school, entered Barry Grunow's classroom, and shot him. Plaintiff, decedent's wife, brought strict liability and negligence claims against the distributor of the handgun, Valor Corporation, premised on design defect theories: (1) that the pistol was a "Saturday Night Special" and (2) that the pistol should have been sold with internal locks. The jury found that the pistol was not defective, either for being a "Saturday Night Special" or because it was not sold with an internal locking mechanism. The jury also found that Valor was not negligent for selling a "Saturday Night Special." Inconsistently, the jury found that Valor was negligent in selling the pistol without "feasible safety measures," which was a legal cause of injury. The jury awarded \$24 million in damages (the distributor's share was only five percent). Valor objected to the inconsistency of the verdict before the jury was discharged. Carlton Fields filed post-trial motions on behalf of Valor. The court granted Valor's motion to set aside the verdict and entered judgment notwithstanding the verdict in favor of Valor. The court recognized that the plaintiff's design defect allegations in her strict liability claims were virtually identical to those in her negligence claims, and that the proofs submitted on the claims was the same. The court held that "cases are legion which stand for the proposition that a jury's finding of no defect in a products liability case precludes a negligence claim and requires judgment in favor of the defendant." Comments: Grunow reaffirms a basic proposition of Florida law, and that of almost every other jurisdiction, that proof of a defect is an element of all design defect claims. (This should be distinguished from cases where the plaintiff asserts a negligent failure to warn claim) Grunow also demonstrates that a finding of no defect, but negligence, requires judgment in favor of the manufacturer, not merely a new trial. However, preservation of the issue was a crucial element of the result obtained. Valor argued strenuously in favor of submitting only one liability question (was there a defect that was the proximate cause of damage?) to the jury. Valor also objected to the form of the

verdict before the jury was discharged. A failure to object may well have led the court to find the issue waived.

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