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**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 25th day of March, two thousand and eight.

PRESENT:

HON. JOHN M. WALKER, JR.,
HON. GUIDO CALABRESI,
Circuit Judges,
HON. STEFAN R. UNDERHILL,
*District Judge.*¹

SHEILA HACKERT, individually and as
Administratrix of the goods, chattels and
credits of William P. Hackert, Jr. and Christine
M. Hackert, deceased and JOHN ANTHONY
HACKERT,
Plaintiffs-Appellees,

v.

No. 06-4387-cv

FIRST ALERT, INC. and BRK BRANDS, INC.,
Defendants-Appellants.

¹ The Honorable Stefan R. Underhill, United States District Judge for the District of Connecticut, sitting by designation.

1 FOR APPELLEES: ROBERT J. GILBERTSON, Robins, Kaplan, Miller & Ciresi
2 LLP, Minneapolis, Minn. (Sally M. Silk and James L.
3 Fetterly, Robins, Kaplan, Miller & Ciresi LLP, Minneapolis,
4 Minn., James E. Hacker and Thomas D. Buchanan, Hacker &
5 Murphy, LLP, Latham, N.Y., *on the brief*).

6
7 FOR APPELLANTS: NEIL A. GOLDBERG, Goldberg Segalla LLP, Buffalo, N.Y.
8 (James H. Heller & Terry M. Henry, Cozen O'Connor,
9 Philadelphia, Pa., *on the brief*).

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12 **UPON DUE CONSIDERATION** of this appeal from a judgment of the United States District Court
13 for the Northern District of New York (Hurd, *J.*), it is hereby **ORDERED, ADJUDGED, and**
14 **DECREED** that the judgment of the district court is **AFFIRMED**.

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17 Defendants-Appellants First Alert, Inc. and BRK Brands, Inc. appeal a judgment entered
18 against them in the United States District Court for the Northern District of New York. The jury
19 determined that a smoke detector manufactured by Defendants-Appellants failed to alert the
20 members of the Hackert family to a fire in their home, and that this failure resulted in the deaths of
21 William and Christine Hackert. Following remittitur, \$2.8 million in compensatory and punitive
22 damages were awarded to John and Sheila Hackert, the surviving family members, under the New
23 York law of negligence and products liability. We assume the parties' familiarity with the facts of
24 the case, its procedural history, and the scope of the issues on appeal.

25 On appeal, Defendants-Appellants raise a number of objections to the proceedings below,
26 many of which challenge the district court's evidentiary rulings. We accord "substantial deference"
27 to a trial court's decisions to admit or reject evidence. *Reilly v. Natwest Markets Group Inc.*, 181
28 F.3d 253, 266 (2d Cir. 1999). Even where, as here, a party has contemporaneously objected to the
29 district court's rulings, a new trial is appropriate only if the court made mistakes that were a "clear
30 abuse of discretion," and were "clearly prejudicial to the outcome of the trial." *Marcic v. Reinauer*

1 *Transp. Cos.*, 397 F.3d 120, 124 (2d Cir. 2005) (quotation marks and citation omitted). Finding no
2 such faults in the case before us, we conclude that Judge Hurd did not err in refusing to grant a new
3 trial on evidentiary grounds.

4 In addition, Defendants-Appellants challenge the sufficiency of the evidence to support the
5 jury's finding of liability. We review de novo the district court's decision to deny judgment as a
6 matter of law, which is warranted only when, "viewing the evidence in the light most favorable to
7 the non-moving party, there can be but one conclusion as to the verdict that reasonable persons could
8 have reached." *Ehrlich v. Town of Glastonbury*, 348 F.3d 48, 52 (2d Cir. 2003) (quotation marks
9 omitted). Our review of the record reveals sufficient evidence to support the jury's determinations
10 (i) that the smoke detector was defectively designed under New York law; (ii) that Defendants-
11 Appellants were negligent with respect to the smoke detector; (iii) that the smoke detector's failure
12 was a legal cause of the deaths of William and Christine Hackert; and (iv) that an award of punitive
13 damages was appropriate.

14 Defendants-Appellants' remaining contentions also lack merit. To the extent that these
15 arguments concern the jury charge, we review the trial judge's instructions de novo, reversing only
16 where they failed to inform or where they misled the jury regarding the applicable legal rule. *See*
17 *Olin Corp. v. Certain Underwriters at Lloyd's London*, 468 F.3d 120, 129 (2d Cir. 2006). We find
18 no errors in the jury charge. Finally, we review for abuse of discretion the district court's decision
19 not to remit still further the jury's award of damages for conscious pain and suffering. *See Gasperini*
20 *v. Ctr. for Humanities, Inc.*, 149 F.3d 137, 140 (2d Cir. 1998). Defendants-Appellants have failed
21 to establish that the district court, in conducting its remittitur analysis, reached clearly erroneous
22 findings of fact, committed legal error, or otherwise abused its discretion. Accordingly, we leave

1 the damages award undisturbed. *See id.* at 142 (“[T]he federal system places primary responsibility
2 for conducting this analysis in the district court. We cannot set aside its fairly-reasoned decision
3 merely because we might disagree with the outcome it reached, or because, if it were left to us, we
4 might decide the matter differently.”).

5 We have considered all of Defendants-Appellants’ arguments, and have found each of them
6 to be without merit. The judgment of the district court is **AFFIRMED**.

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For the Court,
CATHERINE O’HAGAN WOLFE, Clerk of Court

by: _____