

## Civil Trial

# Family Sues For Defective Smoke Alarm

**Defective smoke alarms may be the biggest sleeper consumer issue of the next decade, said Board of Experts member Edward Swartz in a recent interview with *Lawyers Alert*. This new decision from a federal Circuit Court supports that prediction.**

Here a smoke detector did not go off until a family had already evacuated the house and the fire department had arrived, they can sue the manufacturer in "products liability" because the alarm's failure to go off right away "enhanced" the damage to the house" (which in turn caused the family emotional suffering), says the Second Circuit.

The court was interpreting New York law; that state's highest coda has not yet addressed the issue.

It was error for the lower court to dismiss the case on the grounds that the family's claim was really for "economic loss" only, such that they could not sue in tort.

### Unreasonably Dangerous

Even though the defective alarm did not *cause the* fire, the family must be allowed to sue in tort for three reasons.

- (1) "A malfunctioning smoke detector can create an unreasonable risk of harm in that the inhabitants of a [house] who rely on such an alarm may be lulled into an unjustified sense of safety and fail to be forewarned of the existence of a fire."

### •*Lawyers Alert*

- (2) The family suffered both property damage and personal injuries (in the form of "emotional distress" and "loss of consortium").
- (3) The policy behind strict liability is that "a manufacturer is in the best position to insure that its products are safe and to bear the costs of liability by spreading it among its customers."
- (4) "We cannot say as a matter of law that a malfunctioning smoke detector is not a dangerous product. Therefore, [the plaintiffs] are entitled to have an opportunity to show that the alleged failure of the smoke detector to sound a timely alarm ex-posed them to an unreasonably dangerous condition, and that their damages are attributable to this alleged failure."

### \$2.3 Million Case

For a complete analysis of how to sue for faulty detectors, see our recent interview with the lawyers who won 52.8 million in a smoke detector case (4 *Law. Alert* 325 (July 8, 1985)). If you do not have that issue, we will send you a copy of the interview free. Send a stamped, self-addressed envelope to: *Lawyers Alert*, 30 Court Square, Boston, MA 02108 and ask for the July 8, 1985 smoke detector article.

U.S. Court of Appeals. 2nd Circuit. New. York, NY 10007 Tel.: 212-791-0103. *Butler v. Pittway Corp.*, No. 1047, Docket 85-7092. August 2, 1985. *Lawyers Alert* **No. 94-26** (11 pages).

"If a manufacturer lies to you and says that your home is safe, then it should have, to pay for any damages that result."

"The point about smoke detectors is that they are not 'neutral'; they're a positive evil."

"The vast majority of detectors that are being sold to the average consumer very often don't work."

# Smoke Detectors Are Defective In Many Fires

Some children overload the electrical circuits in their bedroom, and the house catches fire in the middle of the night. . . killing them.

What can you do?

Can you do more than collect the insurance?

"Yes," you can sue the manufacturer of the smoke detector. This is the answer that more and more lawyers will be using successfully in the near future.

Lawyers Alert interviewed Board of Experts member Edward M. Swartz and his brother and partner, Fredric A. Swartz, who recently recovered \$2.8 million in such a case from the manufacturer of the detector and from Sears, Roebuck (who sold it). Here's how you can take advantage of this new idea, which has been called "the biggest sleeper consumer issue of the next decade."

Is this really an important trend? It can't be that often that a smoke detector fails to go off. And even if one doesn't go off, why should the manufacturer be liable for that much money?

Smoke detectors fail to go off all the time. The average detector today is virtually useless in an electrical fire, and electrical problems are one of the most common causes of household fires. And there are other fire hazards that a typical smoke detector is simply unable to protect you against...even though the advertising would lead you to believe otherwise.

Consumers go out and buy smoke detectors in order to make their home safe. If a manufacturer lies to you and says that your home is safe...and it isn't...then the manufacturer should have to pay for any damages that result.

But a smoke detector is usually a little plastic device. How can it spark a lawsuit worth millions of dollars?

Besides, you can't say that a detector *caused* the fire, or even that it increased the risk of harm. If a detector doesn't go off, the family is in no worse a position than if they hadn't bought it in the first place.

That's not true. The real harm occurs when the manufacturer misleads the consumer about the efficacy of its product. If a manufacturer came right out at the beginning and admitted that what it was selling was an essentially worthless piece of plastic, the consumer would never buy it. He or she would go some-where else and buy something that would make his or her home truly safe. And as a result, lives could be saved.

Look at it this way: suppose you *buy* a fire extinguisher for your kitchen. When there's a fire and you need the extinguisher to escape to safety, don't you have a right to expect it to work? If the manufacturer *said* it would work, doesn't it have a duty to **make sure** it does? And if you knew that it wasn't going to work, wouldn't you have bought something else instead?

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## Defective Smoke Alarms - "Biggest Sleeper"

- *Butler v. Pittway Corp.*, 770 F.2d 7 (2d Cir. 1985) [pages 1-5], and

- *Laaperi V Sears Roebuck & Co Inc*, March, 1986 *U.S. Court of Appeals for the First Circuit*, March 31, 1986, 787 F.2d 726, [pages 6]

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### **LAWYERS ALERT INTERVIEW (cont)**

In the simple terms of tort law, there is a 'duty to warn of hazards, a breach of that duty, and damages flowing there from. It doesn't matter if the damages are a few dollars or millions. The point about smoke detectors is that they are not "neutral"; they're a positive evil because they *prevent* people from actually doing what's necessary to make their home safe.

What's wrong with smoke detectors? Why don't they work?

In theory, smoke detectors are great things. They certainly *can* work. The problem is that the vast majority of detectors that are being sold to the average consumer very often don't work.

In order for a detector to be satisfactory, it should have three things:

(1) *"Hard" wiring.*

A detector should have its own circuit. It should not just "plug in" to an already-existing circuit, because that circuit will probably be blown at the very beginning of an electrical fire. ..which means the detector will be "dead" long before enough smoke has gathered to set it off.

(2) *Battery back-up.*

Batteries are necessary the event that the fire cuts off *all* electricity ''to the unit.

(3) *A gas detector.*

Many fire deaths and in-juries are caused not by smoke or flames, but by the gaseous by-products of combustion. And this is especially true in houses with poly-urethane vinyl chairs, rugs, drapes, etc., because when that material burns it can give off a gas that is much more dangerous than carbon monoxide. In fact, the FAA ordered many major airlines to change the material in their seats and shelves a few years ago for that very reason. Gas is odorless and colorless and spreads quickly, and to be fully protected a consumer should have a detector that will alert him or her to it.

Don't most smoke detectors on the market include all of these things?

There are many, many smoke detectors in use today that include *none* of these things. Not one. And this is not a case where one or two manufacturers have been lax in their standards. It's an industry-wide problem.

We'll agree that manufacturers should be responsible for inadequacies. But doesn't the average consumer who goes to a store and buys a little plastic smoke detector expect that it's not going to be the best possible model ... that it's not going to be "state-of-the-art"?

Maybe. But they must believe that it's going to be adequate to protect their home, or they wouldn't buy it in the first place. And this belief is fostered by advertising. Let's take a look at what's being said in the advertising:

•The most common themes are "Sleep easy at night," "Protect your family's lives," and so on. But the manufacturers have not met their duty to consumers to actually allow them to sleep easy at night. Truthful, adequate advertising would say: "Protect your family's lives, *except* if there's a common electrical fire, *and except* if there's a common combustion gas hazard, etc."

\*Some of the ads are outright lies. One unit was originally advertised as a "smoke and gas detector" even though it contained no gas detection equipment whatsoever. . .a fact that is particularly appalling because the typical detector can have a gas function added to it.

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### 770 F.2d 7 Butler v. Pittway Corporation

770 F.2d 7

**Prod.Liab.Rep.(CCH)P 10,629**

**Stephen W. BUTLER and Rebekah O. Butler, Plaintiffs-Appellants,**

**v.**

**PITWAY CORPORATION, Defendant-Appellee.**

*No. 1047, Docket 85-7092.*

**United States Court of Appeals,  
Second Circuit.**

*Argued April 19, 1985.*

*Decided Aug. 2, 1985.*

Alexander Geiger, Rochester, New York City (David Rothenberg, Geiger and Rothenberg, of counsel), for plaintiffs-appellants.

Donald W. O'Brien, Jr., Rochester, New York City (Woods, Oviatt, Gilman, Sturman & Clarke), for defendant-appellee.

Before OAKES, MESKILL and PIERCE, Circuit Judges.

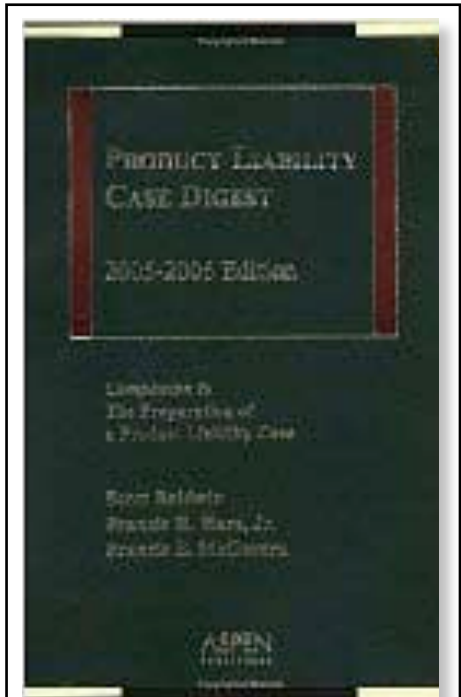
PIERCE, Circuit Judge:

This is an appeal from an order and judgment of the United States District Court for the Western District of New York, Michael A. Telesca, Judge, dated January 30, 1985, granting appellee's motion for partial summary judgment on appellants' first claim for property damage and dismissing sua sponte appellants' second and third claims for personal injuries and loss of consortium as derivative of the first cause of action. For the reasons set forth below, we reverse and remand as to all three causes of action.

#### BACKGROUND

In June 1979, appellant Stephen Butler purchased from a third party two First Alert smoke detectors that had been manufactured by appellee Pittway Corporation (Pittway). Butler testified that he installed the detectors in his home, one downstairs and one upstairs, according to the manufacturer's instructions and tested the units periodically after installation. On the night of August 7, 1981, a fire broke out in the Butler home. Awakened by the smell of smoke in their bedroom upstairs, Butler and his wife alerted their children and the family fled the house. Stephen Butler then telephoned the fire department; it is alleged that it was only after the firemen had arrived and entered the house that the smoke detectors sounded their alarms. There is some evidence which suggests that the fire may have resulted from the spontaneous combustion of linseed oil rags kept in the drawer of a workbench on the ground floor of the house. It is not contended that the smoke detectors in any way caused the fire, rather appellants claim that the failure of the detectors to sound a timely alarm aggravated the extent of the damage sustained.

[MORE >>>](#)



### [Product Liability Case Digest, 2005-2006 Edition](#)

*Butler v Pittway Corp.,  
770 F.2<sup>nd</sup> 7 (2d Cir. 1985),  
applying New York Law.*

*Plaintiffs bought strict liability suit claiming that **smoke detectors** were defective in failing to timely sound alarm. Court held that defect actionable even though detector did not cause fires in question. Theory is equivalent to crashworthiness claims in auto accident cases with damages limited to enhanced injuries.*

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### SEARS WARRANTY

FULL ONE YEAR WARRANTY ON SMOKE ALARM  
(NOT INCLUDING BATTERIES)

For one year from the date of purchase, Sears will repair or replace this smoke alarm, free of charge, if defective in material or workmanship. This warranty does not apply to the batteries, which are expendable. TO OBTAIN WARRANTY SERVICE, SIMPLY RETURN THE SMOKE DETECTOR TO YOUR NEAREST SEARS STORE IN THE UNITED STATES.

**LIMITATION ON LIABILITY**  
SEARS WILL NOT BE LIABLE FOR LOSS OR DAMAGE OF ANY KIND, INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES, RESULTING DIRECTLY OR INDIRECTLY FROM THE FAILURE OF THE PRODUCT TO SOUND AN ALARM IN THE EVENT OF SMOKE OR FIRE.

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

SEARS, ROEBUCK AND CO., BSC 41-3, Sears Tower, Chicago, IL 60684

### SMOKE ALARM WITH 135°F HEAT DETECTOR

ITEM NO.: 957472  
MODEL NO.: 462.57472

# OWNERS MANUAL

PLEASE READ CAREFULLY

**RESPONDS BEST TO FAST  
BURNING, FLAMING FIRES**

9 VOLT BATTERY POWERED

Congratulations

You now own a Sears Smoke Alarm. One that when properly located and maintained can provide you and your family with precious extra seconds to escape a developing fire.

#### OPERATION AND MAINTENANCE

Your Sears Smoke Alarm sounds an alarm when particles of combustion enter the sensing chamber, or when temperature rises above 135°F, even if particles of combustion are not present.

It has been designed to give you years of protection with minimal maintenance. Besides the regular testing of your Smoke Alarm, we suggest every six months you vacuum the outside of the Smoke Alarm. You will note that the Smoke Alarm is permanently sealed and does not require any disassembly.

The only other maintenance your Sears Smoke Alarm requires is the battery replacement. This smoke alarm incorporates two battery monitoring systems. The unit is provided with a red indicator light which flashes approximately once every minute. This flashing light indicates that the battery is properly installed and providing enough power to activate the alarm. The second type of battery monitoring system gives a short chirping sound once a minute for at least one week when the battery is low and needs replacing. Your smoke alarm requires a Sears Die Hard #3094.

(Marked NEDA 1604A) Energizer® #522; Eveready® #216; Gold Peak #1604P or Duracell® #MN1604.

Advise your local Fire Department of your new smoke alarm installation. They are willing to assist in escape planning and fire prevention advice.

Additional information on household fire warning equipment should be obtained by writing to: NFPA, Batterymarch Park, Quincy, Mass. 02269 (Request Standard NFPA-7A)

**CAUTION**  
Early warning fire detection is best achieved by the installation of fire detection equipment in all rooms and areas of the household as follows: A smoke detector installed in each separate sleeping area (the vicinity of, but outside of the bedrooms), and heat or smoke detectors in living rooms, dining rooms, bedrooms, kitchens, hallways, attics, furnace rooms, closets, utility and storage rooms, basements and attached garages.

Note: Under certain circumstances, false alarms may result in battery and garage installations from the presence of food or non-entirely clean-burned smoke detectors where temperatures do not rise to or greater than 100 °F.

### MAINTENANCE

CLEAN WITH VACUUM

Replace Battery with:  
Sears Die Hard #3094 (Marked  
NEDA 1604A), Energizer® #522,  
Eveready® #216, Gold Peak  
#1604P, Duracell® #MN1604

"This Smoke Alarm is recognized by the International Conference of Building Officials (I.C.B.O.) under Research Report No. 2005, 1984."

## FIRE PROTECTION

The Sears Smoke Alarm is designed to respond quickly to the presence of smoke. It can not prevent a fire. There are hazards against which smoke alarms may not be effective such as smoking in bed, explosions, etc. The ultimate responsibility for fire protection rests with you. This responsibility includes escape planning, periodic safety checks and an effective warning system.

Note:

- This Sears Owner's Manual is provided in good faith as a guide only. It is not known if this manual relates to the same model smoke detectors installed in the Butler home in Butler v Pittway Corporation.
- **Laaperi v Sears Roebuck & Co. Inc.** U.S. Court of Appeals for the First Circuit March 31, 1986. Product Liability Suit - US\$1.8M  
In Dec 1976 Albin Laaperi lost his three sons, Alan, James and Paul in a house fire. "Plaintiff's theory of recovery was that defendants had a duty to warn plaintiff that a smoke detector powered by house current, manufactured by Pittway and sold to Laaperi by Sears, might not operate in the event of an electrical fire caused by a short circuit." [More >>>](#)

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**Note:** This document has been provided in good faith as a guide only. The latest version is on the 'Lawyers Home Page' at: [www.TheWFSF.org](http://www.TheWFSF.org)  
There is no guarantee as to the accuracy of the contents of this document - readers are encouraged to conduct their own independent research.  
If you have any updates, corrections or suggestions for this document please email them to: [ab@TheWFSF.org](mailto:ab@TheWFSF.org)

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The following notes are from the appeal in *Laaperi v Sears Roebuck & Co. Inc.* U.S. Court of Appeals for the First Circuit March 31, 1986. Product Liability Suit - US\$1.8M. Full appeal notes are [HERE >>>](#)

1. This is an appeal from jury verdicts totalling \$1.8 million entered in a product liability suit against defendants Sears, Roebuck & Co. and Pittway Corporation. The actions were brought by Albin Laaperi as administrator of the estates of his three sons, all of whom were killed in a fire in their home in December 1976, and as father and next friend of his daughter, Janet, who was injured in the fire. Plaintiff's theory of recovery was that defendants had a duty to warn plaintiff that a smoke detector powered by house current, manufactured by Pittway and sold to Laaperi by Sears, might not operate in the event of an electrical fire caused by a short circuit. Defendants contend on appeal that the district court erred in denying their motions for directed verdict and judgment notwithstanding the verdict; that the admission into evidence of purportedly undisclosed expert testimony violated Fed.R.Civ.P. 26(e); and that the award of \$750,000 for injuries to Janet Laaperi was excessive and improper. We affirm the judgments in favor of plaintiff in his capacity as administrator of the estates of his three sons, but vacate the judgment in favor of Janet Laaperi, and remand for a new trial limited to the issue of her damages.
2. In March 1976, plaintiff Albin Laaperi purchased a smoke detector from Sears. The detector, manufactured by the Pittway Corporation, was designed to be powered by AC (electrical) current. Laaperi installed the detector himself in one of the two upstairs bedrooms in his home.
3. Early in the morning of December 27, 1976, a fire broke out in the Laaperi home. The three boys in one of the upstairs bedrooms were killed in the blaze. Laaperi's 13-year-old daughter Janet, who was sleeping in the other upstairs bedroom, received burns over 12 percent of her body and was hospitalized for three weeks.
4. The uncontroverted testimony at trial was that the smoke detector did not sound an alarm on the night of the fire. The cause of the fire was later found to be a short circuit in an electrical cord that was located in a cedar closet in the boys' bedroom. The Laaperi home had two separate electrical circuits in the upstairs bedrooms: one which provided electricity to the outlets and one which powered the lighting fixtures. The smoke detector had been connected to the outlet circuit, which was the circuit that shorted and cut off. Because the circuit was shorted, the AC-operated smoke detector received no power on the night of the fire. Therefore, although the detector itself was in no sense defective (indeed, after the fire the charred detector was tested and found to be operable), no alarm sounded.

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9. . . . In Massachusetts, **a manufacturer can be found liable to a user of the product if the user is injured due to the failure of the manufacturer to exercise reasonable care in warning potential users of hazards associated with use of the product.** . . .

**The manufacturer can be held liable even if the product does exactly what it is supposed to do, if it does not warn of the potential dangers inherent in the way a product is designed.** It is not necessary that the product be negligently designed or manufactured; **the failure to warn of hazards associated with foreseeable uses of a product is itself negligence,** . . .

10. **The sole purpose of a smoke detector is to alert occupants of a building to the presence of fire. The failure to warn of inherent non-obvious limitations of a smoke detector, or of non-obvious circumstances in which a detector will not function, can, we believe, "create an unreasonable risk of harm in that the inhabitants of a structure may be lulled into an unjustified sense of safety and fail to be forewarned of the existence of a fire."** *Butler v. Pittway Corp.*, [770 F.2d 7](#), 11 (2d Cir.1985). . . .
11. **To be sure, it was the fire, not the smoke detector per se, that actually killed and injured plaintiff's children. But as the Second Circuit recently held, the manufacturer of a smoke detector may be liable when, due to its negligence, the device fails to work:**

Case Notes extracted from: <http://altlaw.org/v1/cases/558821> (emphasis added)