In The
Supreme Court of Virginia

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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

RECORD NO. 091993

ROYAL INDEMNITY COMPANY,
AS SUBROGEE OF FIRST CENTRUM, LLC AND
CENTRUM PRINCE WILLIAM, LP, AND
AMERICAN EMPIRE SURPLUS LINES INSURANCE
COMPANY,
AS SUBROGEE OF FIRST CENTRUM, LLC AND
CENTRUM PRINCE WILLIAM, LP,

Appellants,

v.

TYCO FIRE PRODUCTS, L.P.

Appellee.

SUPPLEMENTAL PLEADING IDENTIFYING JOINT APPENDIX PAGE REFERENCES PRESERVING ASSIGNMENTS OF ERROR FOR APPEAL

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Pursuant to the Court's Rule to Show Cause Order entered on October 20, 2010, Appellants set forth herein the Assignments of Error and page references to the Joint Appendix where the errors have been preserved for appeal.

ASSIGNMENTS OF ERROR

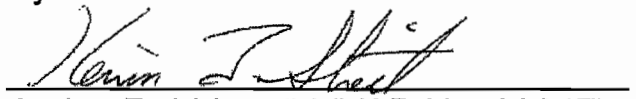
A. The trial court erred in sustaining the defendants' plea in bar on the grounds that the F960 Q46 sprinkler head was an "ordinary building material" rather than "equipment" and granting it's manufacturer, Tyco, protection under the Virginia statute of repose. This issue was preserved by plaintiffs' opposition to the plea in bar and objections to the Court's Order dismissing Counts V, VII and VIII (JA 715).

B. The trial court erred in dismissing Count VIII of Plaintiffs' Amended Motion for Judgment without determining whether a post-sale duty to warn based on negligence principles existed in Virginia law. This issue was preserved by plaintiffs' opposition to the plea in bar and objections to the Court's Order dismissing Count VIII (JA 715).

C. The trial court erred in dismissing the plaintiffs' warranty cause of action on the grounds that the manufacturer's statements concerning the F960 Q46's intended future performance under the Virginia Uniform Commercial Code did not constitute a warranty of future performance. The court further erred in holding that the statute of limitations, therefore, began to run on the date of delivery, rather than on the date of the injury. This issue was preserved by plaintiffs' opposition to the plea in bar and objections to the Court's Order dismissing Count VI (JA 1312-1313).

Respectfully submitted, this 21st day of October, 2010.

By Counsel:



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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Court's Order entered on October 20, 2010, on this 21st day of October, 2010, fifteen copies of this Supplemental Pleading Identifying Joint Appendix Page References Preserving Assignments Of Error For Appeal have been hand-filed with the Clerk's Office of the Supreme Court of Virginia, and three copies of this Supplement Pleading Identifying Joint Appendix Page References Preserving Assignments Of Error For Appeal have been served via UPS Ground Transportation to opposing counsel at the following addresses:

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A digital copy (via CD) of this Supplemental Pleading was also hand-filed with the Clerk's Office of the Supreme Court of Virginia this same date.

Date: October 21, 2010

Kevin T. Streit