

If a court imposes strict warranty liability irrespective of contract and sales rules, then strict liability in warranty and tort are synonymous."

The Plaintiff has sustained the burden of proving, by a fair preponderance of the credible evidence adduced upon trial, that Parke-Davis has breached an implied warranty, and in addition, has been guilty of tortious negligence. The verdict which this Court reaches, and the damages awarded, are supported by either one or both of these theories.

[10] It is my conclusion that the sum of \$500,000.00 constitutes a fair, just and adequate award to Shane Stromsodt, considering the totality of circumstances in this lawsuit.

Counsel for the Plaintiff are directed to prepare and submit through the Clerk of this Court findings of fact, conclusions of law, order for judgment and judgment with the least practicable delay.

[From Federal Supplement, vol. 285—cases argued and determined in the U.S. District Courts—U.S. Customs Court—pp. 432-454]

ERIC R. TINNERHOLM, an infant under the age of fourteen years, by his Guardian ad Litem, Carl F. Tinnerholm, and Carl F. Tinnerholm, Individually, Plaintiffs,

v.

PARKE, DAVIS & Co., Defendant.

No. 62 Civ. 4006.

United States District Court, S. D. New York—May 15, 1968

Action against manufacturer of vaccine for damages resulting from doctor's administration of vaccine to infant. The District Court, Tenney, J., held that evidence established that manufacturer breached its implied warranty and warranty of merchantability and manufacturer was guilty of negligence. That Court further held that plaintiffs were entitled to damages in the sum of \$651,783.52 to reimburse father for loss of services and medical expenses incurred and for infant's loss of wages, future medical expense, and pain and suffering.

Judgment accordingly.

1. Druggists ⇐10

Evidence established that release of endotoxin into fluid contained in vaccine injected into infant was cause of unusually high fever which, in turn, caused severe and permanent brain damage.

2. Druggists ⇐10

In action against manufacturer of vaccine for damages resulting from infant being injected with vaccine, plaintiffs need not disprove every possible ground of causation suggested by manufacturer nor must findings of court meet standards of laboratorian.

3. Sales ⇐427

Liability for "breach of warranty" arises where persons or property are damaged because of product's failure to live up to an express or implied representation by manufacturer or other supplier.

See publication Words and Phrases for other judicial constructions and definitions.

4. Sales ⇐427

"Breach of warranty" is distinguished from negligence liability in that it is not based upon fault or upon failure of such manufacturer or supplier to exercise reasonable care.

5. Sales ⇐260

An "express warranty" will arise where manufacturer, supplier or other seller positively represents a fact concerning goods he sells.

See publication Words and Phrases for other judicial constructions and definitions.