

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Stephen and Catherine Johnson,)	Civil Action No. 2:23-cv-3573-BHH
)	
Plaintiff,)	
)	
v.)	<u>PLAINTIFFS' PRETRIAL BRIEF</u>
)	
Werner Co. a.k.a Werner Ladder Co., and)	
Lowe's Home Centers, LLC,)	
)	
Defendants.)	
_____)	

Plaintiffs Stephen and Catherine Johnson submit this Plaintiffs' Pretrial Brief pursuant to D.S.C. Local Civil Rule 26.05.

A. The names of each attorney, district court identification number and the full name of each firm handling the case.

- I. Plaintiffs Stephen L. Johnson and Catherine Johnson**
 - a. Ronnie L. Crosby Esq. (Fed ID # 6631), Parker Law Group, LLP**
 - b. Derek D. Tarver, Esq. (Fed ID # 12729), Parker Law Group, LLP**
 - c. D. Jay Davis, Jr., Esq. (Fed ID # 12084), Clement Rivers, LLP**
- II. Defendants Werner Co. a.k.a Werner Ladder Co., and Lowe's Home Centers, LLC**
 - a. Jonathan E. Hall (Pro Hac Vice), Phelps Dunbar, LLP**
 - b. Amy Bower (Fed ID # 11784), Parker Poe Adams & Bernstein, LLP.**

B. List of any motions still pending:

Parties have each submitted Motions *in Limine* and other similar pretrial motions, including a request for pretrial hearing on the admissibility of other similar incidents.

C. A brief and concise statement of the facts upon which each claim or defense is based.

Plaintiff Stephen Johnson sustained catastrophic injuries when the rung locks installed on the Werner-brand D1216-2 aluminum extension ladder he was using "false locked" and failed to properly lock the ladder in an extended position. When the "false lock" condition release, the ladder retracted while Plaintiff was approximately ten feet off of the ground. This is only one of at least 25 reported incidents in which a user sustained life-

altering or fatal injuries when a Werner-brand extension ladder's rungs "false locked" or caused the ladder to stay in "unlocked extension." Despite knowing of these incidents and the ladders' propensity to "false lock," Defendant Werner Co., the ladders' manufacturer, refused to redesign the rung lock design or to warn customers of the propensity of Werner-brand extension ladders to "false lock." Defendant Werner Co. has been the subject of at least 22 product liability lawsuits alleging identical failures. Plaintiff, through expert testimony, alleges that the locking mechanism "false locked" due to a manufacturing and design defect.

D. Additional legal authorities upon which each claim or defense is based not listed in the Fed. R. Civ. P. 26(f) report to the court. See local Civ. Rule 26.03(A)(4)(D.S.C.).

- a) **Strict Liability** – see S.C. Code Ann. § 15-73-10.
- b) **Negligent Design** – see e.g., *Branham v. Ford Motor Co.*, 390 S.C. 203, 701 S.E.2d 5 (2010).
- c) **Breach of Implied and Express Warranties** – see S.C. Code Ann. §§ 36-2-313, 314, 315.

E. Any unusual questions of law concerning admission of evidence or procedure likely to arise in the trial of the case

- a) **Other Similar Incidents**: Plaintiffs will seek to introduce evidence of several other similar incidents of catastrophic injuries and/or death caused by "false lock" failures of Werner Co. ladders. Plaintiffs' mechanical engineering expert Dr. John Morse, Ph.D. P.E., personally investigated those other incidents and will be able to provide sufficient evidence with regard to those incidents, including substantial similarity of design, failure mode, and causation, to establish the needed foundation for the introduction of that evidence. See *Buckman v. Bombardier Corp.*, 893 F. Supp. 547, 552 (E.D.N.C. 1995) (citing *Renfro Hosiery Mills Co. v. National Cash Register Co.*, 552 F.2d 1061, 1068-1069 (4th Cir. 1977); *Mills v. Beech Aircraft Corp., Inc.*, 886 F.2d 758, 762 (5th Cir. 1989); *Nachtsheim v. Beech Aircraft Corp.*, 847 F.2d 1261 (7th Cir. 1988); *McKinnon v. Skil Corp.*, 638 F.2d 270, 277 (1st Cir. 1981); *Julander v. Ford Motor Co.*, 488 F.2d 839, 847 (10th Cir. 1973).
- b) **Eggshell Plaintiff Rule**: Plaintiffs anticipate that Werner Co. will seek to introduce evidence that Stephen L. Johnson's spinal fracture was caused in part by osteopenia – age-related or smoking-related bone loss – in an effort to detract from its liability stemming from the fact that the fracture occurred as a result of the subject ladder's "false lock" failure. Any such argument would violate the "thin skull" rule of negligence law, which requires that a defendant, including a product manufacturer like Werner Co., "must take its victim as it finds her." See *Vaughn v. Nissan Motor Corp. in U.S.A.*, 77 F.3d 736, 738-39 (4th Cir. 1996).

F. Statement whether the possibility of a compromise settlement has been discussed and explored with opposing counsel. State specifically whether an offer has been made and the position of each party as to settlement; if no attempt to settle has been made.

The parties, by counsel, have engaged in mediation. At the mediation, the parties engaged in good faith negotiations but were unable to reach a resolution. Plaintiffs are amenable to resolving this case via settlement if Defendant Werner Co. makes a reasonable offer.

G. Names of the witnesses expected to be called and a summary of their anticipated testimony. Also state whether the exclusion of a witness or witnesses is requested pursuant to Fed. R. Evid. 615. If no request is made herein, it shall be deemed waived.

c) **Stephen L. Johnson**
Mount Pleasant, SC 29464

Plaintiff Stephen L. Johnson will testify to the facts and circumstances surrounding the subject incident, including his use of the ladder and its instructions, and the damages associated with his injuries.

b) **Catherine P. Johnson**
Mount Pleasant, SC 29464

Plaintiff Catherine P. Johnson will testify to the facts and circumstances surrounding the subject incident and the damage associated with Stephen Johnson's injuries and her own loss of consortium.

c) **Neil Dickinson**
Mount Pleasant, SC 29464

Mr. Dickinson is the Johnsons' neighbor and ran to the scene to render aid when he heard Mr. Johnson crying for help. He will testify to what he perceived upon arrival to the scene.

d) **Michael Upchurch**
Charleston County EMS

Mr. Upchurch will testify to the facts and circumstances surrounding the subject incident, and the emergency medical treatment provided to

the Plaintiff, Stephen Johnson.

- e) Bruce M. Frankel, MD
Professor & Chair, Neurosurgery, Southern Illinois University
School of Medicine**

Dr. Frankel is a neurosurgeon who operated on Mr. Johnson following the incident. Dr. Frankel will provide testimony regarding Plaintiff Stephen Johnson's injuries and his treatment of those injuries.

- f) Daniel S. Nemeth, MD
Signe Spine & Rehab, LLC**

Dr. Nemeth is one of Plaintiff Stephen Johnson's treating physicians. He will testify to Plaintiff Stephen Johnson's injuries and his treatment of those injuries.

- g) Samuel Hunt McNulty, MD
Mount Pleasant, SC**

Dr. McNulty is one of Plaintiff Stephen Johnson's treating physicians. He will testify to Plaintiff Stephen Johnson's injuries and his treatment of those injuries.

- h) Steven Morgan, MD
MUSC Neurosurgery**

Dr. Morgan is one of Plaintiff Stephen Johnson's treating physicians. He will testify to Plaintiff Stephen Johnson's injuries and his treatment of those injuries..

- i) Meron Selassie, MD
MUSC Pain Management Physician**

Dr. Selassie is one of Plaintiff Stephen Johnson's treating physicians. He will testify to Plaintiff Stephen Johnson's injuries and his treatment of those injuries.

- j) Istavan Takacs, MD
MUSC- Neurosurgery**

Dr. Takacs is one of Plaintiff Stephen Johnson's treating physicians. He will testify to Plaintiff Stephen Johnson's injuries and his treatment of those injuries.

- k) Eric Hadley**

Mr. Hadley is Mr. Johnson's former employer. He will provide testimony regarding Mr. Johnson's career trajectory and the impact his injuries had on his ability to continue working.

**l) Dr. John S. Morse, Ph.D., P.E.
Brocton, NY**

Dr. Morse is a mechanical engineer expected to provide expert opinions related to: (i) the design of the subject ladder, (ii) defects in the ladder's locking mechanism that cause it to "false lock" and alternative designs that would eliminate the ladder's propensity to "false lock," (iii) the cause of the subject ladder's failure, (iv) other similar incidents of ladder failures caused by the same defect, (v) his own research into the physics that result in "false lock," (vi) Werner Co.'s failure to provide adequate warnings and instructions regarding the ladder's propensity to "false lock" and alternative warnings and instructions that would put the user of notice of this risk.

**m) Dr. Oliver G. Wood, Jr., Ph.D.
Columbia, SC**

Mr. Wood is a consulting economist. He is expected to give testimony and opinions in conformance with his knowledge as to Plaintiffs' economic losses resulting from the subject ladder failure.

H. Details statement of damages, including, but not necessarily limited to the following Information:

- (1) Where permanent injuries are claimed, their nature must be described with particularity, and plaintiff's life expectancy must be given. Attach copies of medical reports and doctors' statements where available.

The subject incident resulted in Plaintiff Stephen L. Johnson sustaining a comminuted burst fracture of his T12 vertebrae, a broken transverse process of his T11 vertebrae, and various contusions and minor avulsions on his forehead, shin, and buttocks. He was rushed to the MUSC Emergency Department by ambulance. Mr. Johnson's treatment included a spinal fusion on October 9, 2022. However, as a result of chronic radiating nerve pain in his lower extremities and back resulting from his spinal injuries, Mr. Johnson's neurologists later surgically installed a spinal cord stimulator on April 19, 2024.

At the time of this filing, Plaintiff is 76 years old and his statutory life expectancy under S.C. Code Ann. § 19-1-150 at the maximum for a male in the table.

Plaintiff Catherine Johnson sustained as a result of Mr. Johnson's injuries the loss of her husband's companionship, society, services, and support.

(2) Special damages claimed must be specified in detail. Thus, in personal injury cases, medical, nursing, hospital, and similar expenses should be itemized by giving the names of persons and institutions and the amount paid to or owing each. If property damage is claimed, state the cost of repairs and names of persons making them; if incapable of repair, state the value of the property immediately before the accident and immediately afterwards.

Charleston County EMS:	\$533.10
East Cooper Medical Center:	\$7,196.00
Medical University of South Carolina:	\$421,2007.00
Roper Rehabilitation Hospital:	\$45,506.70
Signe Spine and Rehab:	\$357.00
Lifeguard Ambulance	\$795.08
Total Special Damages:	<u>\$475,594.88</u>

(3) If loss of earnings or profits is claimed, state the amount, the manner of computation, the period for which loss is claimed, and the name of employer, if applicable.

Earning Capacity:	\$228,942.00
Personal Services:	\$62,853.00
Total Financial Loss:	<u>\$291,795.00</u>

(4) In death cases, state the age, employment, rate of earnings, marital status, and life expectancy of deceased; also state the name, age, and the relationship of each dependent.

Not applicable.

(5) The defendant should specify its position concerning damages.

Not applicable.

I. For cases in which the relief sought is not covered by or is in addition to (H) above: (1) The nature of the relief sought. (2) The reason(s) such relief should or should not be granted.

Plaintiffs seek punitive damages on the grounds that the evidence shows Defendant Werner Co. designed, manufactured, distributed, imported, and/or sold the Subject Ladder with a defective rung lock design, without fail safes, and without warning users of the ladder's propensity to "false lock" despite having express knowledge of several earlier deaths and catastrophic injuries resulting from "false lock" failures in ladders with the same and substantially similar locking mechanisms.

J. Where a contract or a writing is involved, include the following information: (1) If a written contract or a writing is involved, furnish a copy to the court, and specify the portions in controversy, along with (a) the claimed construction of the portion I controversy and (b) the party's position as to performance or nonperformance. (2) If the contract is oral, its substance should be given: If the parties dispute the terms specify the disputed terms and provide the same information required in subpart (J)(1) above.

Not applicable.

K. Counsel's best estimate of the time required for trial.

One week.

L. Any special matters to which the court's attention is sought or required.

None.

M. Any reason why the case cannot be tried at the term for which it is set for trial.

None.

N. The final list of exhibits intended to be used in the trial of the case with any objections noted. This list shall be served on opposing counsel

See Exhibit 1. The parties exchanged these lists on February 4, 2026, at the Local Rule 26.07 Meet, Mark, and Exchange conference.

O. Counsel's request for voir dire questions (see Local Civ. Rule 47.04 (D.S.C.)). Copies of the requests for voir dire questions shall be served on opposing counsel. If the requests for voir dire

are not submitted seven (7) days prior to the selection of the jury, counsel shall be deemed to have waived the right to submit voir dire questions unless made necessary by events at trial

- 1. Are you familiar with any of the parties or the law firms representing the parties?**
- 2. Do you have any knowledge about this lawsuit?**
- 3. Are you familiar with Werner aluminum extension ladders?**
- 4. Do you use extension ladders regularly in your personal or work life?**
- 5. Do you have family members who work in jobs where extension ladders are used?**
- 6. Have you or anyone you know ever had an accident or been injured while using a ladder?**
- 7. Do you own an extension ladder, whether Werner-brand or otherwise?**
- 8. Have you or someone you knew ever used an extension ladder that stayed extended in an unlocked condition while using it?**
- 9. Have you, anyone in your immediate family, or close friends had an experience using a Werner-brand extension ladder that might make you favor one side or the other in this case?**
- 10. Do you, anyone in your family, or a close friend or acquaintance work in the field of product engineering or product design such that you may favor a product manufacturer in a product liability lawsuit?**
- 11. Do you have an aversion to personal injury litigation such that it might make you favor one side or the other in this case?**
- 12. Have you, anyone in your family, or a close friend or acquaintance been injured in an accident involving an extension ladder that might make you favor one side or the other in this case?**
- 13. Do you have an aversion to attorneys such that you may disfavor a plaintiff who was an attorney by trade?**
- 14. Do you have an aversion to nursing homes such that you may disfavor a plaintiff who worked for a company in the nursing home industry?**

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