



**PRESS RELEASE - FOR IMMEDIATE RELEASE – DECEMBER 6, 2012**

**LAWRENCEVILLE, NJ**

**Lawsuit by Partially Blinded New Jersey Man Against Pennsylvania Fireworks Vendor Can Proceed To Trial**

A New Jersey man, blinded in one eye during a neighborhood fireworks display, could have his legal claims brought to trial against the Pennsylvania store that sold those fireworks. Ocean County Superior Court Judge James Den Uyl denied defendant Sky King Fireworks' motion to dismiss the case, brought by [Steven Blader](#), of [Szaferman, Lakind, Blumstein & Blader, PC](#), of Lawrenceville, on behalf of Thomas Eldershaw of Jackson.

According to the November 2012 decision, the company's Morrisville, Pennsylvania, store sold \$1,229.58 worth of fireworks to Michael Maibach, Mr. Eldershaw's neighbor. Mr. Maibach asked Mr. Eldershaw to help set off the display. The decision states that while lighting the fireworks on July 4, 2010, one of the mortars ignited, striking Mr. Eldershaw in the left eye. Despite two subsequent surgeries, he lost the vision in that eye.

Mr. Eldershaw is suing Sky King Fireworks (Sky King) for negligently selling the fireworks to Mr. Maibach and failing to provide instructions on how they should safely be used. Defendant's motion to dismiss claimed the lawsuit should be ended as, under Pennsylvania law, the sale was legal and as such, the seller owes no duty of care to Mr. Eldershaw. Judge Den Uyl disagreed, and ruled that a jury could find Sky King negligent in the sale of the fireworks and be held accountable for Mr. Eldershaw's injuries.

According to the decision, Pennsylvania law requires its residents to produce a permit issued by a municipality prior to legally purchasing fireworks in the state. Non-residents may purchase fireworks without such a permit. Judge Den Uyl cited that under New Jersey law only those issued permits by local authorities can legally purchase or use fireworks.

According to the decision, Sky King wasn't checking New Jersey customers to see if they had proper permits. Mr. Maibach did not have the proper permit prior to purchasing or using the fireworks, and, according to the decision, the store gave him no instructions on how they should be safely used.

The court took note of the size of the sale (\$1,229.58) and determined that such a sale should have put Sky King on notice that Mr. Maibach was planning a large, sophisticated display which would make injuries foreseeable if those setting them off weren't trained or experienced in using fireworks.

Though the sale of fireworks was legal under Pennsylvania law, Judge Den Uyl wrote that doesn't shield Sky King from a negligence claim based on New Jersey law. "The competence or sophistication of the purchaser/operator may or may not be a concern depending on the type and quantity of fireworks purchased. In the particular circumstances of this case and sale to Michael Maibach, Sky King arguably had a duty to do something to either assess his knowledge, training or experience to stage a fireworks display and/or provide some instruction on how to do so safely," the decision states.

Judge Den Uyl went on to write, that though not required by Pennsylvania law, Sky King could require a New Jersey purchaser to produce a permit or provide instructions and safety tips.

"The New Jersey legislature has determined that the use or possession of fireworks is 'against the public health, safety, and welfare of the people of the State of New Jersey' and subsequently banned consumer fireworks possession and use in the state," Judge Den Uyl wrote, "The situation in New Jersey is serious and compounded by the fact that accessibility to purchasing fireworks by New Jersey residents is only a short ride away over the state line into Pennsylvania."

The decision states that at least half of the Morrisville store sales come from New Jersey and the store actively markets and advertises its products to New Jersey residents. Morrisville, Pennsylvania, is located across the Delaware River from New Jersey and is linked to it by three bridges.

The judge noted the Newark Star Ledger reported that in 2010, July 4 fireworks started a fire that left 26 homeless, including 13 children. [Reuters Health](#) reports about 2,000 Americans sustain eye injuries due to fireworks each year. The [U.S. Consumer Product Safety Commission](#) estimates that in 2011, about 9,600 people were treated in hospital emergency rooms due to fireworks related injuries.

Sky King, according to its website, started in South Florida and now has eighteen stores in three states, including four in Pennsylvania. A copy of the decision is attached.

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