

**Products Liability Law Daily Wrap Up, EVIDENTIARY ISSUES—  
HOUSEHOLD PRODUCTS—7th Cir.: Allowing ladder labeled as  
demonstrative evidence into jury room was error requiring new trial, (Sept.  
16, 2013)**

Products Liability Law Daily Wrap Up

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By John W. Scanlan, J.D.

It was an abuse of discretion to send a ladder that had not been admitted into evidence during a trial on products liability claims to the jury's deliberation room, the U.S. Court of Appeals for the Seventh Circuit held in reversing a district court's decision and remanding the case for a new trial (*Baugh v. Cuprum S.A. de C.V.*, September 13, 2013, Hamilton, D.).

**Background.** John Baugh was using a ladder manufactured by Cuprum S.A. de C.V. to clean his gutters when the ladder collapsed, causing him a severe brain injury. His wife, Sharon Baugh, brought defective design and negligence claims on his behalf against Cuprum. During the trial, Cuprum was permitted to use an exemplar ladder built to the same specifications as Baugh's ladder as a demonstrative exhibit to demonstrate that the ladder would not collapse under a normal load with all four of its legs on the ground. Over Baugh's objections, the court allowed the jury to examine the ladder in the jury deliberation room. After the jury found in favor of Cuprum, Baugh appealed.

**Demonstrative evidence.** The ladder, as demonstrative evidence, should not have been allowed to go to the jury room, the Seventh Circuit ruled. Although the term "demonstrative" has been used in multiple ways—which the court said may have confused the district court—a "demonstrative exhibit" is not itself evidence, but is a persuasive tool or pedagogical device created and used by a party. Demonstrative exhibits are not admitted as substantive exhibits under the Federal Rules of Evidence, and this label indicates to all parties that these exhibits will not go to the jury without their consent. Labeling exhibits as demonstrative may lead an opposing party to waive valid objections to their admissibility, and allowing these exhibits to go to the jury would force parties to treat them as potential substantive evidence. This would undermine the ability of parties to use them properly to aid juries.

In this case, the exemplar ladder was properly used by the expert witness for the defense to illustrate his oral testimony, but because the district court had repeatedly stated to both parties that the ladder was being used only as a demonstrative exhibit, allowing it to go to the jury room was an abuse of the court's discretion. This error was not harmless because it effectively lulled counsel for the plaintiff into a false complacency that the ladder was not being used as evidence and, therefore, counsel did not have an opportunity to plan for the effects of its being introduced into evidence and allowing the jurors to touch and step on it. The Seventh Circuit noted that following three days of deliberations, the jury reached its verdict shortly after being granted access to the ladder, indicating that the error might have been decisive.

The case number is [12-2019](#).

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Companies: Cuprum S.A. de C.V.

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