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INDUSTRY NEWS

Elderly Florida Man Gets \$925,000 in Scald Suit

BY ROBERT P. MADER Of CONTRACTOR's staff

WESTON, FLA. — A Florida jury has awarded \$925,000 to an elderly man who was scalded so badly that he had to have two fingers and part of a third amputated. The injured apartment renter successfully sued his landlords Gerald and Sara Silverman for failure to inspect and maintain the water heater after he was scalded by water that approached boiling temperatures.

The Broward Circuit Court jury recently found for Morris Zisk, the 84-year-old plaintiff and seasonal vacationer from New Jersey. In February 2003, Zisk received burns severe enough to require amputation after water from the tap scalded his hands in an apartment he had rented with his wife.

The \$925,000 awarded by the jury to Zisk were compensatory damages.

After the mishap, it was discovered that the water heater's thermostat had corroded, and the apartment's owner failed to test the water before renting the unit. Instead of heating water to 120°F, water spiked to 212°F.

Zisk's lawyer Mark Glassman said the insurance company's plumbing contractor opened a faucet and a mixture of steam and water came out.

"Under Florida law, building owners or landlords must perform reasonable inspections on facilities or appliances before tenants move in," Glassman said.

"Before turning over the keys, the landlord didn't inspect any of the appliances," Glassman said. "The law puts the duty on the landlord to conduct a reasonable inspection. They're in the best situation to uncover any defects."

The plaintiff did not sue the water heater manufacturer or any plumbing contractor, Glassman said, because it was clear that the failure of the water heater was the result of it not being serviced by the landlord.

The building was built in 1972, Glassman said, part of the Wynmoor Village retirement community of privately owned condominiums, each with its own water heater.

The unit was the second in Wynmoor in which the landlord had lived. The landlord bought a larger unit in the late 1990s and rented the condo. The original water heater was replaced in the unit in 1992 under a service contract with Roto-Rooter's Service America division.

Nobody had looked at the 30-gal. Ruud 240V electric unit from 1992 until the

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accident, Glassman said, because the water heater sat in a corner underneath a cabinet. The stove had to be moved to gain access to the water heater.

The plumber working for the defendant's insurer, Allstate, testified that he found corrosion on the two thermostats and green oxidation on the T&P relief valve. He testified that he thought that all three had failed, but without thinking he threw the thermostats and the T&P valve away, not preserving the evidence, Glassman said.

Ruud's literature said that the water heater had to be maintained, Glassman said, and he was able to get the landlord to admit at trial that he knew that.

The landlord carried \$1.3 million in insurance. Glassman said he had demanded \$400,000 and Allstate countered with \$100,000. Zisk had incurred \$175,000 in medical bills.

Glassman told CONTRACTOR that he used the precedent of *Mansur v Eubanks* 401 So.2d 1328 Florida Supreme Court 1981, which says a landlord has a duty to inspect the premises before turning an apartment over to a tenant and to make needed repairs in order to convey a reasonably safe unit. Coincidentally, Mansur involved a water heater explosion, Glassman said.

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