3202 IMPLIED WARRANTY: FITNESS FOR PARTICULAR PURPOSE

An "implied warranty" is a warranty which arises by operation of law from the acts of the parties or circumstances of the transaction. It requires no intent or particular language or action by the seller to create it.

When the seller at the time of sale has reason to know any particular purpose for which the goods (product) are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods (product), there is an implied warranty that the goods (product) shall be fit for such purpose. In determining whether the goods (product) were fit for such purpose, you will consider its use in the light of common knowledge of the nature of the goods (product) sold. [A warranty of this kind does not mean that the goods (product) can be used with absolute safety, or that they are perfectly adapted to the intended use, but only that they shall be fit for such purpose.]

COMMENT

The instruction and comment were originally published in their present form in 1971. The comment was updated in 1980. Editorial changes were made in 1994. No substantive changes were made to the instruction.

Wis. Stat. § 402.315.

In order for there to be a jury question as to an implied warranty of fitness for a particular purpose, there must be some credible evidence in the record demonstrating reliance by the buyer. Valiga v. National Food Co., 58 Wis.2d 232, 257, 206 N.W.2d 377 (1973). See also Wisconsin Elec. Power Co. v. Zallea Bros., Inc., 606 F.2d 697 (7th Cir. 1979). Moreover, the supreme court has stated that for this statutory section to be applicable the seller must select the goods. Ewers v. Eisenzopf, 88 Wis.2d 482, 276 N.W.2d 802 (1979). In supporting this holding, the court in Ewers quoted the following explanation from Williston, Sales:

> Obviously, in order for the implied warranty of fitness for a particular purpose to arise, and for the buyer to be able to apply § 2-315, there must be a reliance on the seller by the buyer and that seller must select goods which turn out to be unfit for the particular purpose indicated by the buyer. Where the buyer makes his own selection

> of goods, he cannot expect to recover upon the implied warranty of fitness for a particular purpose, since he does not meet the criteria for applying § 2-315 . . . . Id. at Vol. 3 at 125 (4th ed. 1974).

The above instruction does not apply if there are exclusions or modifications of warranties as listed in Wis. Stat. § 402.316.

By adopting the Uniform Commercial Code the "trade name exception" of the old Wis. Stat. § 121.15(4) has been eliminated. Under the UCC, the fact that the article was ordered by trade name would merely be a factor in determining whether the buyer relied on the seller's skill or judgment to furnish suitable goods.

Accordingly, a number of earlier Wisconsin decisions discussing this exception are no longer applicable. E.g., Ohio Electric Co. v. Wisconsin-Minnesota Light and Power Co., 161 Wis. 632, 155 N.W. 112 (1915); Northwestern Blaugas Co. v. Guild, 169 Wis. 98, 171 N.W. 662 (1919); Fox v. Boldt, 172 Wis. 333, 179 N.W. 1 (1920); Russell Grader Mfg. Co. v. Budden, 197 Wis. 615, 222 N.W. 788 (1929); Milwaukee Boiler Co. v. Duncan, 87 Wis. 120, 58 N.W. 232 (1894); LaCrosse Plow Co. v. Helgeson, 127 Wis. 622, 106 N.W. 1094 (1906); LaCrosse Plow Co. v. Brooks, 142 Wis. 640, 126 N.W. 3 (1910).

For a general discussion of what constitutes a "particular purpose," see 83 A.L.R.3d 669 (1978).