

# MICHIGAN SUPREME COURT



## *Office of Public Information*

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### **EXPLODING HOUSE FUELED LAWSUIT TO BE ARGUED BEFORE MICHIGAN SUPREME COURT IN MARSHALL FOR ‘COURT COMMUNITY CONNECTIONS’**

**Parties dispute whether installers created a new hazard, or made an existing one worse, by installing a dryer in front of an uncapped gas line that owner later unknowingly turned on**

LANSING, MI, April 18, 2012 – An open flame, an uncapped gas line, and the resulting explosion of a Macomb County home ignited a legal dispute that the [Michigan Supreme Court](#) will hear in oral arguments on May 9 in Marshall, as part of the “Court Community Connections” educational program.

In *Hill v Sears Roebuck & Company*, the plaintiffs’ home exploded after the owner unknowingly turned on the gas to an uncapped laundry area gas line and her daughter used a cigarette lighter. The gas line, which was left turned off and uncapped by the former owners, was behind an electric dryer that the owner had had installed shortly after she bought the house, about three and a half years before the explosion. The owner, and her children who were living with her, sued the store where the owner bought the dryer, as well as the companies that delivered the dryer and the contractors who installed it. Among other matters, the plaintiffs contend that the installers made an existing danger worse by locating the electric dryer in front of the gas line, and that the installers should have warned the owner about the gas line, refused to install the dryer, or capped it. The installers argue in part that they owe the plaintiffs no duty apart from installing the dryer as they contracted to do, and that they had nothing to do with the explosion. Although the defendants sought to have the case against them dismissed, both the trial court and the Michigan Court of Appeals ruled that the plaintiffs’ case could go forward. The Court of Appeals determined in part that the installers did owe the plaintiffs a duty because, the appellate court said, the installers created a “new hazard” that they should have anticipated “would cause serious damages.”

While the Court normally hears oral argument at the [Michigan Hall of Justice](#) in Lansing, the “Court Community Connections” program takes the Court to various locations throughout Michigan to hold oral argument. The program is aimed principally at high school students.

The Supreme Court started “Court Community Connections” in 2007 to foster a greater understanding of appellate courts and their impact on peoples’ lives, explained Chief Justice Robert P. Young, Jr.

“In contrast to the trial courts, the appellate process gets little attention; the appellate courts are pretty low on drama,” Young said. “And yet, appellate rulings set legal precedents that can have profound and far-reaching effects. Through this program, students not only learn about the appellate process; they get to see it in action.”

Calhoun County Circuit Chief Judge James C. Kingsley, who invited the Supreme Court to Marshall, said the Court’s visit has generated “a lot of enthusiasm. The legal community, the schools, the students – we’re all looking forward to this program, and we’ve had great cooperation from everyone involved.” The Calhoun County Bar Association is working with local students who are studying the case, the chief judge said.

Students from 17 Calhoun County high schools will watch as attorneys in *Hill v Sears* argue their cases to the Supreme Court’s seven justices. Afterwards, the students will meet with the *Hill v Sears* attorneys for a debriefing.

Court will be held in the Calhoun County Commissioners’ Chambers, located at 315 Green Street, Marshall. The oral argument will begin at 12:40 p.m. Media are welcome; please note the Court’s [policy on film and electronic coverage](#) and contact the Office of Public Information for permission to film or photograph during the hearing.

*Please note: The summary that follows is a brief account of the case and may not reflect the way some or all of the Court’s seven Justices view the case. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of the case. Briefs are available at [http://www.courts.michigan.gov/supremecourt/Clerk/msc\\_orals.htm#May](http://www.courts.michigan.gov/supremecourt/Clerk/msc_orals.htm#May). For further details about the case, please contact the attorneys.*

**HILL, et al. v SEARS ROEBUCK & COMPANY, et al. (case nos. [143329](#), [143348](#), and [143633](#))**

**Court of Appeals case no. [295071](#)**

**Trial Court:** Macomb County Circuit Court

**Attorney for plaintiffs Marcy Hill, Patricia Hill, and Christopher Hill:** Mark R. Granzotto/(248) 546-4649

**Attorney for defendants Sears Roebuck & Company and Sears Logistic Services, Inc.:** Michelle M. Holwey/(248) 646-5100

**Attorney for defendants Exel Direct, Inc. and Merchant Delivery, Inc.:** Constantine N. Kallas/(248) 335-5450

**Attorney for defendants Mark Pritchard and Timothy Dameron:** Thomas J. Azoni/(248) 851-9500

**At issue:** The plaintiffs’ home exploded after the owner unknowingly turned on the gas to an uncapped gas line and her daughter lit a cigarette lighter. The uncapped gas line was behind an electric dryer that had been installed about three and a half years earlier. The owner, and her children who were living with her, sued the store where the owner bought the dryer, as well as the companies that delivered the dryer and the contractors who installed it. Did the installers owe a duty to the plaintiffs apart from their contractual duty to install the dryer? Did the installers create a new hazard or make an existing hazardous condition worse? Do the other defendants owe any duty to the plaintiffs?

**Background:** Marcy Hill bought a house in Clinton Township. When the sellers of the home moved out, they took their washer and natural gas-powered dryer with them. Although the sellers turned off the gas to the line feeding the dryer, they apparently did not cap the end of the line that

attached to the dryer. Neither Hill nor anyone else noticed that the line was uncapped. She lived in the home with her daughter, Patricia, and son Christopher.

Several weeks after moving in, Hill bought a new washer and electric-powered dryer from Sears. Exel Direct and Merchant Delivery delivered the dryer. Mark Pritchard and Timothy Dameron, two independent contractors, installed the dryer in a kitchen niche intended for washer/dryer appliances, at the direction of Hill's mother. The dryer worked well for three and a half years.

One day, while dealing with a leak under the kitchen sink, Hill unknowingly turned on the gas to the uncapped line as she turned various valves in the furnace room, hoping to find the one that would turn off the water. For about 24 hours, Marcy and Patricia Hill smelled gas repeatedly, but did not call the gas company or anyone else to investigate the odor, although Marcy Hill opened all the windows in the house to get rid of the smell. Then, in the middle of the night, Patricia lit a cigarette lighter – and the house exploded. The three Hills all survived the explosion, but Marcy and Patricia were injured, with Patricia suffering the worst injuries.

The Hills sued the installer of the gas line, the sellers of the house, Sears, the delivery companies Exel and Merchant, and installers Pritchard and Dameron, claiming that the defendants had been negligent and that their negligence caused the Hills' injuries. In particular, the Hills contended that Pritchard and Dameron, as the installers, had a duty to inspect the gas line, cap it, warn the Hills about it, or refuse to place the new electric dryer in front of it. Moreover, Sears, Exel, and Merchant should be liable for the installers' alleged negligence because the installers were acting as agents or servants of Sears and the two delivery companies, the Hills claimed.

All the defendants associated with the sale, delivery, and installation of the dryer moved for summary disposition, asking the circuit court to dismiss the Hills' case. They argued, in general, that they owed no duty to the Hills with respect to the uncapped gas line, and that they did nothing to cause the explosion. Sears and the delivery defendants also argued that they could not be held liable for the installers' actions because the installers were independent contractors.

But the circuit court rejected the defendants' arguments, ruling that the case against them would continue. As to the installers, the judge held that there was sufficient evidence to support the Hills' claim that the installers made "the hazard created by the uncapped gas valve worse." There were also factual issues as to whether Sears and the delivery companies retained control over the installers even though they were independent contractors, the judge maintained.

The defendants appealed, but the Court of Appeals upheld the circuit court in an unpublished opinion. The defendants appeal to the Michigan Supreme Court, which has directed the parties to address the following issues at oral argument:

***Did the installers owe the plaintiffs a duty with respect to the uncapped gas line that was separate and distinct from the installers' duty to install the dryer properly and safely?***

The Court of Appeals concluded that the installers did owe the Hills a duty because they created a "new hazard" that they should have anticipated "would cause serious damages."

While the uncapped line was the original hazard, the Court of Appeals said, the installers created a new and different hazard by installing “the dryer in a way that concealed the uncapped gas line.” Moreover, the Court of Appeals said, “The social benefits of requiring delivery men to refrain from concealing obvious hazards exceed the minimal social cost.” The defendants argue that the installers had nothing to do with the explosion – that the accident occurred because Hill opened a gas valve and her daughter ignited an open flame, three and a half years after the dryer was installed. The installers’ duty was limited to delivering and installing an electric dryer; they owed no duty to inspect the gas line or do anything to it, the defendants contend. The defendants also argue that a risk-benefit analysis does not justify imposing a duty on installers to detect, warn of, or correct preexisting hazards in a home.

***Did the installers create a new dangerous condition with respect to the uncapped gas line, or make an existing danger worse?***

The Court of Appeals held that the installers created a new hazard because their installation of the electric dryer “concealed” the uncapped gas line. “A concealed and uncapped gas line is a different hazard than a gas line in plain sight,” the Court of Appeals stated. “Had the gas line never been concealed, or had plaintiffs been told of its existence prior to it being concealed, Marcy Hill may have realized that the uncapped line was the source of the gas smell on the day in question.” The defendants argue that the dangerous condition existed before they installed the dryer and remained the same after they left, causing no problems until Marcy Hill unwittingly opened the gas line. The hazard that caused the explosion was not the placement of the dryer in front of the uncapped gas line, but the gas line itself, the defendants maintain.

***Did defendants Sears and the two delivery companies breach any duty to the plaintiffs?***

Sears and the delivery defendants argue that they cannot be held liable even if the installers breached a duty to the Hills because the installers are independent contractors. The Michigan Court of Appeals acknowledged that, under Michigan case law, “a person who hires an independent contractor is not liable for injuries that the contractor negligently causes.” But, the appellate court said, “while ... evidence favors the finding of an independent contractor relationship, it does not definitely settle the issue.” Deposition testimony by an Exel employee provides “reason to believe that Exel exercised a certain amount of control over the delivery teams that it engaged,” the Court of Appeals stated. Pritchard had participated in training that Exel required of its independent contractors and also trained others as a “master contractor,” the Court of Appeals said. “[I]t would be improper to grant summary disposition to the various defendants on this basis where the evidence in the record does not clearly establish the nature of the relationship between the various parties.”

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