

Issue: Were good Parents negligent for their advertisement that caused harm to The Sullivan's baby?

Your Honor, My Client, Good parents, should not be found negligent for what has been filed by the Sullivan parents. To be held responsible for negligence, the defendant would have not taken due care and breached that duty, which what have resulted in an injury to the plaintiff. My client did take due care, and bought a Warming Woobie, the product, and gave her honest review. Good Parents saw no foreseeable harm when writing a review about the Warming Woobie. Many other outlets were writing glowing reviews about the product as well. The product catching fire isn't the fault of my client, that is the manufacturer who supplies the product. The terrible injury to Sullivan's child was at the hands of Warming Woobie, not Good Parents. I am citing the *Braun v. Soldier of Fortune Magazine Inc*, Yes Soldier of Fortune Magazine was found liable. But unlike my client, they were not inciting violence or any danger, they were writing a review for a product they thought was great. I would like to cite, *Nebraska Press Association v. Stuart*. In this case, journalists were protected in what they were producing and publishing. As stated in this trial by Justice Burger "A whole community cannot be restrained from discussing a subject intimately affecting life within it. I would also like to cite *National Broadcasting Co., Inc. v. Niemi*, 434 U.S. 1354 (1978), In this case, NBC was also protected by the first amendment. NBC, who is similar to my client, produced media that they saw no foreseeable harm or recklessness to be caused by what has been published. NBC was found not negligent, because of their intention. Good Parents had very similar intentions. They wrote a truthful glowing review hoping to help parents and their children. The product sadly malfunctioned, but Good parents wouldn't have been able to know that this could be an outcome. The First Amendment allows individuals to speak, publish, read, and view what they wish. My client, Good Parents, was speaking their truth, and opinion about a product, and then published it. The Supreme Court holds restraint on the media. This can only be justified when there is clear evidence that the speech will cause great harm. Which we saw with *Schenck vs the united states*. Charles Scheck a socialist party member, who mailed anti-draft pamphlets to men across Philadelphia. This showed clear and present danger to the nation which is why the speech was restrained. The Sullivans haven't shown any evidence that Good Parents has tried to cause damage or harm to their child. My client is not negligent because of what their buyers choose to do with their publications. When writing this review, my client was giving their opinion on the product. Based on the Ollom Test, The first part to assess an opinion is if the statement is verifiable, and if can it be proven true or false. If it cannot, then it is considered an expression of opinion. My client's review was not verifiable, which makes the publication an opinion. Opinions are also protected under the first amendment by Fair comment and Criticism. This is a common law privilege that protects reviewers from lawsuits. This was brought into common law for legal immunity to express honest opinions. We saw this in *Gertz V. Robert Welch*. An opinion magazine wrote an article about Gertz and called him a communist fronter. This was seen as an opinion to the court, and protected under fair comment, and criticism. In *Gertz VS Robert Welch*, Justice Lewis

Powell stated “ Under the first amendment there is no such thing as a false idea”. Good parents saw absolutely no foreseeability when writing the review about the Warming Woobie. Good Parents took due care, bought the product, and wrote an expressive, opinionated review on the Warming Woobie. My client should not be held negligent for their honest opinion regarding the product.