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Lift Truck Not Defective For Lack Of Reverse Signal Alarm

Reaux v. Deep South Equipment Company,
2004-0378 (La. App. 4 Cir. 1/5/05), ___ So.2d___

A five judge panel of Louisiana's Fourth Circuit Court of Appeal has held that a lift truck which backed up into the plaintiff injuring him was not defective merely because it did not have an audible alarm that sounded when the truck was backing up. In so doing the Fourth Circuit upheld summary judgment in favor of the lift truck manufacturer which had been granted at the district court level by Judge Michael Bagneris.

The plaintiff's accident occurred while he was working in a dimly lit warehouse checking merchandise. A lift truck operated by a co-employee backed up striking his left ankle. Their employer investigated the accident and came to the conclusion that the cause of the accident was simply the carelessness of the plaintiff and his co-worker, both of whom were later found to have marijuana metabolites in their blood.

In a three to two split decision, the Fourth Circuit affirmed summary judgment for the manufacturer. The court relied heavily upon an OSHA regulation which provides that employers who use vehicles "having an obstructed view to the rear" must either post a third party observer to monitor backing movements or utilize a reverse signal alarm. The court reasoned: "It was [the employer's] choice whether to lease a lift truck with a back-up alarm or to provide a third party observer when the truck was being driven in reverse. The fact that the lift truck did not have a back-up alarm did not render it defective."

A dissenting opinion was written by Judge Belsome. He argued that the fact that there was no OSHA violation did not establish that the lift truck was not defective. In Judge Belsome's view, "Such vehicles are consistently used around workers in poorly lit and noisy warehouses. The fact that lift trucks often come equipped with audible alarms for backing up is a good indicator that perhaps the alarms should be standard."

The opinion raises once again the interesting issue of whether consumers should be permitted to select among variously-priced product models, some having fewer safety features than others. To what extent and in what circumstances must manufacturers restrict consumer choices in order to avoid lawsuits? We will continue to follow this developing issue for our readers.

- Madeleine Fischer

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"Clothing Exposure" Claims Against Employer Not Viable Under Ga. Negligence Law

CSX Transportation v. Williams,
608 So. 2d 208 (Ga. 1/24/05)

The U.S. Court of Appeals for the 11th Circuit certified the following question to the Georgia Supreme Court: "Whether Georgia negligence law imposes any duty on an employer to a third-party, non-employee, who comes into contact with its employee's asbestos-tainted work clothing at locations away from the workplace, such as the employee's home?" In a recent unanimous decision, the Georgia Supreme Court said no.

The question was put to Georgia's top court by the Eleventh Circuit in a case brought against CSX by families who alleged that exposure to asbestos fibers on the employees' work clothes caused family members to develop asbestos-related illnesses. In each claim, CSX moved for summary judgment, asserting that "clothing exposure" claims were not viable under Georgia law because the employer owed no duty to non-employees to protect them from exposure to asbestos dust emitted from its employees' work clothing away from the workplace.

While the federal district court denied CSX's motions for summary judgment, that court, recognizing that the issue of duty raised by CSX was one of first impression in Georgia, granted CSX's leave to file an interlocutory appeal. The Eleventh Circuit granted the interlocutory appeal and submitted the issue to the Georgia Supreme Court.

In its unanimous decision, the Georgia Supreme Court agreed with CSX. Relying heavily on a case from another jurisdiction, *Widera v. Ettco Wire & Cable Corp.,* 611 N.Y.S. 2d 569 (N.Y. A.D. 1994) (infant allegedly injured *in utero* from exposure to toxic chemicals on father's work clothes), the Georgia court stated:

> The court in [*Widera*] held the common-law duty to provide employees with a safe workplace 'has not been extended to encompass individuals, such as the infant plaintiff, who are neither "employees" nor "employed" at the worksite.... Nor does our research reveal a reported case from any jurisdiction where an employer's duty has been interpreted to extend to a person, such as the infant plaintiff, who is injured in the manner alleged herein….'

The court concluded that "the holding in *Widera* is consistent with negligence law in Georgia" and that "an employer does not owe a duty of care to a third-party non-employee who comes into contact with its employee's asbestos-tainted work clothing at locations away from the workplace."

Although "clothing exposure" claims have been filed numerous times in Louisiana federal and state courts, so far, no reported decision applying Louisiana law has addressed the issue of whether an employer's duty to provide a safe place to work extends to third parties injured away from the workplace due to hazardous materials carried on an employee's clothing. Of course, the opinion of the Georgia Supreme Court finding that the duty does not extend to such third parties is not binding on a Louisiana court, but it certainly would be persuasive authority when defending a "clothing exposure" case in Louisiana.

- Robert L. Walsh

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