WINTER 2013 NEWSLETTER

PRODUCTS LIABILITY UPDATE

By Rocky Little

1. *Genie Indus. v. Matak*, No.13-11-00050-CV (Tex. App. -- Corpus Christi-Edinburg, December 6, 2012).

Apprentice electrician, Walter Matak died from massive craniocerebral injuries caused when he crash-landed to the floor from a 40-foot, fully-extended AWP-40S aerial work platform manufactured by Genie. The AWP-40S is a lightweight portable single-person aerial lift with a work platform, or bucket, which is enclosed with a guardrail and telescopes up to forty feet. The base is supported by four outriggers at each corner, with foot pads supporting each outrigger. The lift's base has wheels which allow a single person to roll it around a worksite. The outriggers must be locked in place in order for the machine to elevate the bucket. However, it is possible to raise the outriggers, and roll the base, while the bucket is elevated.

Prior to his fall, each time Matak needed to reposition himself to work, he would lower the lift and exit the lift bucket. Then, he and a co-worker would raise the outriggers and move the lift to a new spot. However, a facility maintenance worker who had used the AWP-40S many times suggested that Matak did not need to lower himself, but rather he and Matak's co-worker could raise the outriggers and roll the lift while Matak remained elevated. While doing this, the lift fell over resulting in Matak's crash landing. Matak's estate brought a cause of action against Genie based on strict products liability for a defective design.

DESIGN DEFECT

To prevail in a products liability case alleging a design defect, a plaintiff must prove by a preponderance of the evidence that:

(1) the product was defectively designed so as to be unreasonably dangerous;
(2) a safer alternative design existed; and
(3) the design defect was the producing cause of the damages sought.

To determine whether a defectively designed product is "**unreasonably dangerous,**" Texas courts apply a **risk-utility analysis** which includes the following factors:

(1) the utility of the product to the user and to the public as a whole weighed against the gravity and likelihood of injury from its use;
(2) the availability of a substitute product which would meet the same need and not be unsafe or unreasonably expensive;
(3) the manufacturer's ability to eliminate the unsafe character of the product without seriously impairing its usefulness or significantly increasing its costs;

(4) the user's anticipated awareness of the dangers inherent in the product and their avoidability because of general public knowledge of the obvious condition of the product, or of the existence of suitable warnings or instructions; and
(5) the expectations of the ordinary consumer.

The Court noted that whether a product is unreasonably dangerous is generally a question of fact for the jury, rather than a question of law to be decided by the Judge. The Court also noted that the risk-utility analysis does not operate in a vacuum, but rather in the context of the product's intended use and its intended users. The fact that the lift's utility is high and the risk of injury is low when the product is used as intended is but one consideration in the multitude of factors used in the risk-utility analysis. Also, the fact that a product's foreseeable risk of harm stems from a misuse of the product, rather than its intended use, is not an absolute bar to design defect liability. Misuse of the product is a factor that must be considered in allocating responsibility. In other words, product misuse is subject to comparative responsibility.

A "**safer alternative design**" is statutorily defined as a product design other than the one actually used that in reasonable probability:

(1) would have prevented or significantly reduced the risk of the plaintiff's injuries;
(2) without substantially impairing the product's utility; and
(3) was economically and technologically feasible when the product was manufactured or sold.

In this case, the plaintiff introduced evidence through a design engineer's expert witness testimony of four alternative designs that met the criteria for a safer alternative design. Therefore, the Court of Appeals upheld the jury's finding that the Genie AWP-40S lift was defectively designed so as to be unreasonably dangerous, which was a producing cause of Matak's injuries.