

SUMMER 2014 NEWSLETTER

PRODUCTS LIABILITY UPDATE

By Rocky Little

1. *Ortega v. Nat'l Oilwell Varco, L.P.*, No. 01-14-00230-CV (Tex. App. [7th Dist.] Amarillo, April 24, 2014).

Ortega sued National Oilwell Varco (“NOV”) on products liability and negligence theories for injuries suffered while working on an oil rig manufactured by NOV. NOV filed a No-Evidence Motion for Summary Judgment, and the only evidence offered by Ortega was an affidavit from an engineer who opined that the oil rig was negligently designed and manufactured, and that the defects and negligence were producing and proximate causes of the accident. The court determined that the expert’s opinions in statements were conclusory and noted the following:

The most we can derive from them is that 1) some unnamed “component part” failed to perform as intended and acted as “a producing and proximate cause of the accident,” 2) an unnamed safety system failed in a foreseeable way, 3) safer alternative designs were available, 4) there were unnecessary delays in the braking function, and 5) the service and emergency brakes failed to function. Yet, the affiant did not explain or reveal 1) what the component part was and whether it was part of the braking system or some other system, how the part was designed or manufactured defectively, and how the failure of the part resulted in the accident, 2) whether the safety system that failed is the braking system or some other system, how the safety system was designed or manufactured defectively, why it was foreseeable that the system would fail, and how that failure resulted in the accident, 3) the identity or description of safer alternative designs that were purportedly feasible, why they were safer and feasible, and whether they would have prevented or reduced the risk of personal injury without impairing the utility of the product, 4) what facts made the delays in the braking function unnecessary and how those delays resulted in the accident, and 5) what facts showed a breach of duty by NOV with respect to the failure of the brakes. The absence of this information is fatal since no other summary judgment evidence appears of record to explain the conclusions reached by Munsell. Therefore, the trial court did not err in finding the expert’s opinions to be conclusory, that is, lacking in factual support.

Consequently, the expert’s affidavit was deemed to have no evidentiary value, and the Court of Appeals affirmed the Trial Court’s granting of NOV’s No-Evidence Motion for Summary Judgment.