2018 YEAR IN REVIEW

SIGNIFICANT DECISIONS IN 2018

Premises Liability and Motor Vehicle Liability

By George L. Lankford

Premises Liability:

Martin v. ECO Services Operations, LLC, No. 01-17-00293-CV (Tex. App.-Houston [1st Dist.] Feb. 22, 2018)

Employee of independent contractor was injured while unloading sulfuric acid from a truck at a connection point at a chemical plant. He using a heavy hose to unload the chemical, but the hose snagged on a metal plate or grate. When the hose released, the hose pushed against the employee's arm and caused a shoulder injury. The employee of the independent contractor sued the plant owner on the basis that the plant owner had a right of control over the plaintiff's work activity in using the hose. The trial court granted the plant owner's motion for summary judgment. On appeal, the court of appeals affirmed the summary judgment.

A premises owner owes a business invitee a duty "to make safe or warn against any concealed, unreasonably dangerous conditions of which the landowner is, or reasonably should be, aware but the invitee is not." However, when the invitee is an employee of an independent contractor, the injury causing defect must be analyzed as either (1) existing on the premises when the employee entered the location, or (2) was created by the employee's work activity. If category (1), then only concealed hazards – dangerous in their own right and independent of anyone's actions – are deemed premises defects for which a premises owner may be liable. If category (2), then the defect poses no danger until the independent contractor's employee activates its dangerous by commencing work with it, and the premises owner is only liable if the exercise control over the contractor's work and fails to use reasonable care.

In the instant matter, plaintiff alleged the defects arose as a result of his work activity, i.e. category (2.) The steel plates and pipe on the ground allegedly caused the hose to snag. Such danger did not exist on the premises independently of plaintiff's work activity, i.e. category (2.) The undisputed evidence was that ECO did not exercise control over plaintiff's work: a.) ECO employees did not assist or supervise plaintiff's unloading process of maneuvering the hoses, b.)plaintiff's employer had access to the unloading spot at all times; and c.) on the two occasions an ECO employee spoke to plaintiff while he was unloading, the conversation did not involve instructing plaintiff how to do the task.

Plaintiff argues the "necessary use" exception … ECO owned the hose and thereby ECO "controlled the only way for plaintiff to attach the hose and unload the cargo." However, this limited exception only applies when there are no other means of doing the task than by using the dangerously defective condition. In this matter, the dangerous condition was the metal plates and

grate on the ground. They're use was "not necessary" to plaintiff's work, thus the snagging of the hose was "not unavoidable."

Ana Aranda v. Hovnanian Homes-DFW, 2018 WL 3017307 (Tex.App.-Dallas, June 18, 2018.)

Victor Arana died after falling from a rafter at a construction site. He worked for a second tier framing subcontractor. He was not wearing a helmet or safety harness. The heirs sued. The court granted Hovanian's motion for summary judgment.

The threshold question is whether the defendant owed a legal duty to the plaintiff. The court recognized a premises owners or general contractor does not owe any duty to ensure that an independent contractor performs its work in a safe manner. A limited duty arises if a general contractor or premises owners retains control over a subcontractor's methods of work or operative details to the point that "the subcontractor is not entirely free to do the work in his own way." The general contractor's or premises owner's "duty of reasonable care is commensurate with the control it retains' over the subcontractor.

However, "general supervisory control" that does not relate to the specific activity causing injury does not create a duty. The specific act in this matter was Victor Arana standing on open ceiling rafters without safety equipment to fix some damaged insulation. Those facts do not raise a fact issue on a duty to control. Additionally, there was evidence that Antonio Arana exercised control over his workers, not the defendant. Antonio Arana directed the framing crew where to work and when to begin work, and Victor Arana told the crew when to stop work. Consequently, there was insufficient control to create a duty of care.

The plaintiffs argue that defendant created a dangerous condition that should make it liable under premises liability law. The court disagreed, and found there was no evidence that the defendant created the condition of "walking on the open ceiling rafters on the premises without fall protection.

Motor Vehicle Liability:

In Re Toyota Motor Sales, 2018 WL 2979855 (Tex.App.-Dallas, June 14, 2018.)

The Reavises sued defendant Toyota for defectively designing front seats that are susceptible to failure in rear-impact collisions. In their case, the Reavises claim that in a rear-end collision, their children suffered skull fractures and traumatic brain injuries when the front seats collapsed into the back seat and struck their children.

As part of the discovery in the case, the trial court entered a discovery order in November 2017, that defined the scope of discovery to specific Toyota models and years. Later, the Reavises filed a motion to compel claiming Toyota failed to conduct reasonable searched of its electronic information system. The court then entered another order that directed Toyota to:

1. Provide a table of contents in English that is sufficient to identify the folders and sub-folders within specified Toyota data bases, and provide a copy of the index, ledger, bibliography, or other compilation of information from which the papers are maintained in Toyota's technical library.
2. Identify all engineers who have responsibility for designing and testing vehicles or seats.
3. Conduct additional searches in accordance with a protocol that enables the plaintiffs to participate in crafting search requests in Toyota's date base.

Toyota argued that to allow the plaintiffs to supply search terms and requires Toyota to turn over search results was the same as allowing the plaintiffs "direct access to Toyota's electronic systems" which is normally limited to "legitimate interests of the opposing party to avoid overly broad requests, harassment, or disclosures of privileged information in keeping with the understanding that discovery is a means to an end, rather than an end in itself." Requests must be "reasonably tailored to include only matters relevant to the case and must be limited to the relevant time." Also, "if the likely benefit of the requested information is negligible, nonexistent, or merely speculative, the expense attending the request is undue and sufficient to deny the requested discovery."

The court of appeals agreed that the requested discovery was overbroad in its reach, and places a disproportionate burden on Toyota. "As written, the … order will require Toyota to identify many irrelevant folders, sub-folders and papers, such as folders concerning fuel lines, engines, facilities, maintenance, and employees. The benefit of producing such information is nonexistent. The expense attending the requirement is undue." The court of appeals ordered the trial court to vacate the portions of its order that are not limited folders, subfolders and the technical library "that contain documents within the scope of an]earlier] November discovery order.

The court of appeals further agreed the search queries should be limited to the relevant scope of discovery the vehicle class and with time constraints. It should comport with the earlier November order. Additionally, the engineers identified should be limited to those who worked on designing seats for the class of vehicles specified in the earlier November order.