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EXPLORING THE CHANGING FACE OF PRODUCT LIABILITY

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Damage Cap Inapplicable: Court May Determine “Actual Knowledge” Despite Jury’s Finding of No Gross Negligence

By Mark Masters

In *Rodriguez v. ASE Industries, Inc.*, _ Mich App _ (2007), the primary issue presented for the Court of Appeals’ consideration was whether the trial court was free to conclude that a defendant in a products liability action had actual knowledge that the product was defective under MCL 600.2949a even if the jury had determined under MCL 600.2946a(3) that the defendant was not grossly negligent. The Court held that the two determinations were independent and that a finding by the jury that there was no gross negligence did not preclude the trial court from concluding that ASE had actual knowledge.

Plaintiff was seriously injured in the course of her employment with Defendant American Axle. Specifically, she was injured when her hair became entangled in the rollers of a conveyer system used at American Axle and manufactured by ASE Industries. The jury found in favor of Plaintiff on her products liability action against ASE. The jury further determined that ASE was 30 percent at fault for the accident and that American Axle was 70 percent at fault. Finally, while the jury found that ASE was not grossly negligent, the trial court found that ASE had actual knowledge that the product was defective and, therefore, declined to apply the damages limitations of MCL 600.2946a.

ASE’s first argument on appeal was that the trial court erred in ruling that the products liability damages cap (MCL 600.2946a) was inapplicable. The *Rodriguez* Court disagreed. The limitations on damages in products liability actions imposed under MCL 600.2946a(1) did not apply under certain conditions set forth in MCL 600.2946a(3):

The limitation on damages under subsection (1) for death or permanent loss of a vital bodily function does not apply to a defendant if the trier of fact determines by a preponderance of the evidence that the death or loss was the result of the defendant’s gross negligence, or if the court finds that the matters stated in section 2949a are true.

SECRET WARDLE NOTES:

“There is an exception to every rule.” This case should serve as a warning to all: Even legislated legal defenses have exceptions and judges may apply the defenses differently than a jury. In addition, the law sometimes changes without warning.

As always, the best defenses are those which establish that a product’s manufacturer acted reasonably at all times, that the manufacturer was not negligent or grossly negligent, and that the manufacturer did not have actual knowledge of the danger posed to Plaintiff.

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In this case, the jury found that ASE was not grossly negligent, but the trial court found the matters stated in MCL 600.2949a were true, which required a finding that ASE had actual knowledge that the product was defective and that there was a substantial likelihood that the defect would cause injury.

ASE argued that the trial court's determination that ASE had actual knowledge was inconsistent with the jury's determination that ASE was not grossly negligent. ASE further argued that the trial court could not reach a determination that was inconsistent with the jury's verdict. Interestingly, that was ASE's only argument on this point. ASE explicitly conceded in its appellate reply brief that it was not arguing that the record did not support a finding of actual knowledge.

In interpreting an unambiguous statute, the statute must be applied as written. Furthermore, the Court must assume that every word used by the Legislature had meaning and effect should be given to every provision. Therefore, the Court found that the only way to give meaning to the phrase "or if the court finds that the matters stated in section 2949a are true" was to conclude that the trial court's determination of actual knowledge did not have to be consistent with the jury's determination of gross negligence. In other words, the statute clearly and unambiguously established two independent bases to avoid application of the damages limitation: if the trier of fact determined that ASE was grossly negligent or if the trial court determined that the actual knowledge provisions of § 2949a applied. The determination of one cannot control the determination of the other.

Therefore, the trial court's determination of "actual knowledge" was upheld, and ASE was not entitled to the statutory cap on damages.

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