



Strict Liability Abnormally Dangerous Activity

— by Jeffrey D. Eberhard

In a recent case involving the storage of propane gas, the Oregon Court of Appeals examined what was required to establish, as a matter of law, that an activity is abnormally dangerous such that strict liability should be imposed. In Ellis v. FerrellGas, -- P.3d ---, WL 987034, Oregon Court of Appeals (April 4, 2007), Harold Ellis was injured in a propane gas explosion while working as a forklift driver at a lumberyard. Ellis sued FerrellGas for damages based on negligence and strict liability.

In Oregon, a defendant who conducts activities which are “abnormally dangerous” or “ultra-hazardous” will be held liable for injuries caused by those activities regardless of whether or not they were negligent. Relying on their expert witness opinion that the accident that caused plaintiff’s injuries required negligence on the part of someone, and was most likely caused by Ellis’ own backing into or running over a propane hose with his forklift

Claims Pointer

Oregon law applies strict liability for injuries resulting from “abnormally dangerous” activities. In determining whether an activity is “abnormally dangerous” as a matter of law, courts examine the legal and factual record pertaining to the activity. Especially important to the court’s inquiry is the potential for harm of exceptional magnitude, probability for such harm despite the utmost care, and whether the activity is relatively common in the community.

while attempting to refuel, FerrellGas moved for partial summary judgment on the strict liability claim. Ellis also moved for summary judgment on the strict liability claim, submitting his own expert opinion that the storage of propane gas was inherently dangerous, that the tank that FerrellGas maintained was of sufficient size to create a “catastrophic explosion” (although the explosion in question was relatively small) and that based on the expert’s knowledge of propane and propane storage equipment, the explosion that caused Ellis’ injuries could have happened without anyone’s negligence.

The trial court granted Ellis’ cross-motion on the strict liability claim after finding that by furnishing the propane and the storage tank, FerrellGas was engaged in an abnormally dangerous activity as a matter of law and was subject to strict liability for Ellis’ injuries. FerrellGas appealed.

In determining whether the trial court had sufficient evidence to classify FerrellGas’ activity as “abnormally dangerous” such that it should be held strictly liable for Ellis’ injuries, the Oregon Court of Appeals examined the record for legal and factual evidence that the activity of storing propane gas was “ultra-hazardous.” Accordingly, it reviewed the trial court record to assess FerrellGas’ alleged hazardous activity by its potential for harm of “exceptional magnitude or probability despite the utmost care” and whether the activity is relatively common in the community. Specifically noting that the evidentiary record did not address the extent to which the storage of propane gas in a tank was common, any inappropriateness of the activity to the place where it occurred, or the extent, if any, to which the value of the activity to the community is outweighed by its dangerous attributes, the Court ultimately concluded the record was insufficient to establish that the activity of storage of propane gas in a tank was “abnormally dangerous” such that FerrellGas should be strictly liable for Ellis’ injuries. The Court reversed the trial court’s summary judgment ruling in favor of Ellis and remanded the case for further proceedings. ❖

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