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Court grants statutory rebuttal presumption of non-liability to qualified manufacturers

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In a recent unpublished decision, the Michigan Court of Appeals has held that a manufacturer who designs a product in compliance with negotiated variances to government regulations is entitled to the statutory rebuttable presumption of non-liability found in MCL 600.2946(4).

This statute, enacted in 1996 as part of sweeping product liability reform legislation, provides that a manufacturer is not liable for the harm or injury caused by the product if, “at the time the specific unit of the product was sold or delivered to the initial purchaser, the aspect of the product that allegedly caused the harm was ... approved by, or was in compliance with regulations or standards relevant to the event causing the death or injury promulgated by, a federal or state agency responsible for reviewing the safety of the product.”

In *Juan Toledo, Personal Representative of the Estate of Vincente Toledo v. Gateway Precision Technologies, LLC*, 2005 WL 3481436 (Mich. App.), the plaintiff’s decedent was killed when his head was caught between two components of a hot-wire cutter manufactured by the defendant. The decedent was employed by a company that processes polystyrene foam for insulating materials and the hot-wire cutter was used to cut large foam pieces. Apparently, the decedent was attempting to remove scrap pieces of foam from underneath the hot-wire cutter at the time of the accident.

The decedent’s employer had negotiated two variances with the Michigan Department of Labor because Michigan Occupational Safety and Health (MIOSHA) regulations required a physical barrier to be placed around the hot-wire cutters, which the foam manufacturer claimed would have prevented the machine operator from gaining necessary access when the cutter was energized. These variances required that two safety features, an emergency stop cable around the perimeter of the cutter and a flashing red light to signal that the cutter was energized, be incorporated into the hot-wire cutters. To meet the requirements of the variances, the defendant manufactured the hot-wire cutter to the specifications of the decedent’s employer.

The decedent's personal representative asserted claims of product liability and negligence against the hot-wire cutter manufacturer. Although a MIOSHA investigator discovered that the emergency stop wire was not working properly at the time of the accident, there was no dispute that it was functional at the time of delivery.

The trial court granted the defendant's motion for summary disposition, holding that the defendant's compliance with the variances was sufficient to trigger the rebuttable presumption of non-liability found in MCL 600.2946(4) because the device was compliant when delivered and because the plaintiff's argument that other safety devices may have prevented the accident was not sufficient to rebut that presumption. The court noted the variances themselves provided that "compliance with the requirements of this variance will be considered as abatement of the requirement of the standard." The plaintiff then appealed.

The Michigan Court of Appeals began its analysis by recognizing the rule discussed in *Huff v. Ford Motor Co.*, 127 Mich. App. 287; 338 N.W.2d 387 (1983) that a product manufacturer cannot be held liable for following a purchaser's plans and specifications for a product unless those specifications are "so obviously dangerous that they should not reasonably be followed." As such, the court concluded, the plaintiff would have to prove that the specifications to which the subject product was designed were obviously dangerous and defective, and application of MCL 600.2964(4) would preclude any such finding in this case.

The plaintiff argued that the defendant was not entitled to the rebuttable presumption of non-liability because the MIOSHA variance was not "relevant to the event causing the death or injury" in that it was intended to protect workers from contact with "live parts" and hot wires, not the pinch point that caused the death in this case. The court disagreed, concluding that all of the evidence indicated that the emergency stop cable called for in the variance, if functioning as designed, would have served to protect workers from both hot-wire and pinch point injuries.

Finally, the plaintiff argued that, assuming the rebuttable presumption of non-liability applied, the presumption was overcome by the presentation of evidence of alternative safety devices that may have prevented the accident. The appellate court disagreed, concluding that the plaintiff had produced "no evidence that the pinch point, as guarded by the emergency stop cable, which was the aspect of the product that allegedly caused the harm, did not comply with MIOSHA regulations." The court further noted that the plaintiff's expert did not testify that the emergency stop cable was inadequate to protect from pinch point injuries. Furthermore, the plaintiff failed to produce any evidence indicating that industry standards required any of the proposed alternative safety devices.

For a complete copy of *Juan Toledo, Personal Representative of the Estate of Vincente Toledo v. Gateway Precision Technologies, LLC*, [click here](#).