

The Eleventh Circuit Affirms CSST Fire Verdict in Subrogation Case

In a 14-page, unpublished opinion dated January 10, 2018, the U.S. Court of Appeals for the Eleventh Circuit affirmed a verdict now in excess of \$1.5 million with interest in a subrogation claim that also involved uninsured losses against Ward Manufacturing, Inc., one of the major manufacturers of corrugated stainless steel tubing (CSST). The original trial and appeal were handled by Cozen O'Connor attorneys Mark Utke and Tony Morrone, who chair the firm's CSST Task Force. The decision represents the first affirmance by an appellate court of a verdict in favor of a plaintiff in a CSST case. The opinion is also significant because Ward attempted to attack plaintiffs' primary expert, Dr. Thomas Eagar.

The facts involved a Tampa, Fla., residence that was struck by lightning in 2011. The home contained CSST, which is used to transport propane and natural gas from its source to various appliances within homes. CSST is manufactured with very thin steel to make it flexible and, when exposed to electrical energy from direct or indirect lightning strikes, the product can arc to anything metallic, producing a molten perforation in the CSST. The escaping gas can then be ignited, resulting in a blow-torch type flame that causes catastrophic damage. CSST failures are responsible for more than 100 residential fires each year.

The home, owned by Mazen Hanna and insured by Olympus Insurance Company and Progressive American Insurance Company, burned to the ground with very little evidence that could be salvaged from the scene. A single line of CSST was found in the rubble with a perforation that appeared to be caused by electrical arcing. The tubing was heavily corroded and physically damaged by the collapse of the structure. Lab tests confirmed that the perforation was caused by high voltage electricity associated with lightning. The defendant manufacturer contested the plaintiff's expert's findings and further argued that the hole was caused by fire attack unrelated to any lightning.

At trial in the U.S. District Court for the Middle District of Florida, the jury returned a verdict finding that Ward's CSST product was defective and unreasonably dangerous, that Ward was also negligent for not testing the product for lightning resistance before placing it on the market, and finding Ward negligent for failing to issue a post-sale warning of the hazards that it was aware of after the sale of its product. The jury awarded \$1.2 million, which was 100 percent of the replacement cost damages for the home, its contents, and the automobiles in the garage.

Ward filed an appeal to the Eleventh Circuit primarily contending that plaintiffs' metallurgical expert, Dr. Thomas Eagar, provided opinions that were unsubstantiated and unreliable. The Eleventh Circuit specifically rejected all of Ward's attacks on Dr. Eagar finding that he was well qualified to provide his opinions, that those opinions would be helpful to the jury, and that those opinions were reliable. In short, the trial court judge properly exercised his discretion in allowing Dr. Eagar to testify.

Finally, the Eleventh Circuit rejected the manufacturer's additional objections relating to the theories of strict liability and failure to warn because the negligence finding alone was sufficient to sustain the verdict. As such, the court did not need to address those arguments.



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Related Practice Areas

- Subrogation & Recovery

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