A Mind Is A Terrible Thing to Paint: Employer Not Liable For Failing to Protect Security Guard From Effects of Paint Spill

The United States District Court for the Eastern District of Michigan has granted judgment before trial to DuPont Automotive (DuPont), holding that DuPont did not breach its duty to a security guard who claimed that he was injured in connection with a paint spill at DuPont's plant.

FACTS

In 1997, a 2,400 gallon paint spill occurred at DuPont's paint manufacturing facility. At the time of the spill, the plaintiff, Jerome Hunley, was working at the facility as a Pinkerton security guard. Certain policies and procedures established that, in the event of a spill, security guards were to generate a series of head count reports to account for all employees at the plant, but were not to enter the spill area.

After the paint spill, Mr. Hunley was sent into the paint spill area by his Pinkerton supervisor to deliver head count reports to the fire brigade chief. Mr. Hunley alleged that he was not warned of any danger or provided with protective clothing for his visit to the spill area.

Two days later, Mr. Hunley was driving his pickup truck at a speed of sixty to eighty miles per hour, against rush hour traffic, when his truck became airborne and landed on top of another vehicle, killing the woman inside. Following the traffic accident, he acted bizarrely and was ultimately diagnosed with schizophrenia.

Mr. Hunley filed suit against DuPont, alleging that his schizophrenia was caused by exposure to the paint spill, and that DuPont was negligent in failing to warn him of the dangers

associated with such a spill and/or provide him with protective clothing to guard against such dangers.

ELEMENTS OF A PRIMA FACIE NEGLIGENCE CASE

In order to bring his negligence claim to trial, Mr. Hunley needed to establish and prove that: (1) DuPont owed a duty to protect him; (2) DuPont breached that duty by falling below the required standard of care; (3) DuPont's failure to meet that standard of care caused his mental illness; and (4) he was entitled to compensation for his injuries.

DUTY

DuPont argued that it did not have a duty to protect Mr. Hunley because the events that resulted from his exposure to the paint spill were unforeseeable. The court observed, however, that DuPont's argument did not affect the initial question of whether a duty existed. The court held that DuPont did have a duty to protect its contracted security guards from paint spills.

BREACH OF DUTY

In deciding whether DuPont breached its duty to protect its contracted security guards from paint spills, the court first had to establish the standard of care that DuPont owed to the guards. The court first noted that contracted security guards are generally deemed to be "business invitees" of the owners of the premises they are hired to guard. An owner of premises is required to warn business invitees of danger "only if the danger was actually known of or, by the exercise of reasonable care, should have [been] known to pose an unreasonable risk to the invitee." In other words, DuPont had to warn Mr. Hunley of: (1) known risks; and (2) reasonably foreseeable risks.

The court held that DuPont had not breached its duty to protect Mr. Hunley. First, the court observed that it was not "foreseeable that witnessing an emergency response to a paint spill could cause a psychotic episode," and DuPont was only required to protect against known or foreseeable risks. Second, the court noted that the plant's policy of forbidding Pinkerton security guards from entering a spill area was adequate protection against the type of harms that *could* foreseeably result from exposure to a paint spill.

ASSUMPTION OF RISK

The court further held that, even if DuPont had failed to adequately warn or protect Mr. Hunley, he had "assumed the risk" of his injuries. The assumption of risk doctrine "provides that an employee assumes the risks of injury from ordinary activities," and, therefore, cannot recover from an employer for injuries incurred while performing those activities. The doctrine is limited, however, to an employer-employee situation. Mr. Hunley was employed by Pinkerton rather than by DuPont and, thus, was not DuPont's employee. Therefore, the conventional assumption of risk doctrine would not apply to Mr. Hunley.

The court examined past Michigan court decisions, however, and determined that assumption of risk could apply to a non-employee "if he/she is harmed by performing the very duty that he/she has been hired to perform." Because Mr. Hunley alleged that his injuries were incurred while he was delivering a head count, which was one of the duties he was hired to do, Mr. Hunley assumed the risk of injury.

Because Mr. Hunley failed to prove the "breach of duty" element of a negligence case, and had also assumed the risk of his injuries, the court awarded judgment before trial to DuPont. This made it unnecessary for the court to examine the issues of causation and damages.

Hunley v. DuPont Automotive, 2001 WL 1548892, December 14, 2001

H. Kirk Meadows