

Manufacturer Not Liable;
Followed MoDOT Plans

by

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This article appeared in St. Louis Construction News and Review, p. 2, November-December, 2015.

A manufacturer that follows an owner's plans, drawings and specifications for a construction project is not strictly liable when a person is injured by the product, Missouri's Eastern District Court of Appeals decided on September 22. The case is *Hopfer v. Neenah Foundry Co.*, 2015 WL 5573965.

In 2009, Norman Hopfer was severely injured when he lost control of his pickup truck after driving over an open drainage inlet on Hall Street in the City of St. Louis. At least one of the grates covering the inlet was dislodged at the time.

Hopfer's lawsuit alleged that Neenah Foundry Co. was liable for his injuries under a strict products liability theory. Specifically, Hopfer alleged that the grates became dislodged due to design defects in that only two open-slot bolts were used to secure the grates.

Neenah was a manufacturer of the cast-iron grates. Neenah's normal grates have four bolts fastening each grate to a frame. In this instance, the grates on Hall Street were modified to use only two-bolt holes.

Neenah had manufactured the grate under a contract with the Missouri Department of Transportation (MoDOT). MoDOT installed the grates as part of its road improvement program.

After a jury verdict in Neenah's favor, the Eastern District considered two points on appeal: first, whether the trial court erred by allowing a jury instruction that contained the affirmative defense that compliance with the contract specifications absolved Neenah from liability and, second, whether the jury should have been allowed to consider that Neenah did not perform certain testing when designing the grates.

Regarding the first point, Neenah contended at trial that MoDOT specified the same grates for the 2005 Hall Street project that previously were manufactured and used in a MoDOT 1999 retrofitting project.

Hopfer conceded that the grates used in the Hall Street project were the same as those used in the previous 1999 retrofitting project. He argued that the plans for the Hall Street project did not specify the type of grates to be used.

He contended that MoDOT relied on Neenah to design and manufacture the two-bolt grate and to gauge the safety of this product, especially since it was a departure from the standard four-bolt grate typically manufactured by Neenah. Hopfer also presented evidence that MoDOT does not design roadway grates.

A Neenah employee and engineer testified that MoDOT and Engineering Design Source, Inc. (EDSI) asked Neenah to change its standard four-hole grate to a two-hole design. The employee further testified that MoDOT was “controlling the show” with respect to the design and that Neenah “supplied what they asked for.”

Neenah was not consulted about what type of grates to use in the Hall Street project. MoDOT engineers decided that the Neenah two-hole grates originally created for the 1999 retrofitting project were to be used in the Hall Street project. After work was completed, a MoDOT engineer on the Hall Street project testified that he had accepted the work as complying with MoDOT specifications, including the two-hole grates.

Hopfer’s legal theory was strict liability. Strict liability focuses solely on whether the grates were unreasonably dangerous and therefore defective when made.

Unlike negligence, a defendant’s conduct, standard of care and fault in the manufacturing process are not relevant considerations for the jury. The appellate court decided to uphold previous Missouri law that compliance with contract specifications is a defense that shields the manufacturer from strict liability.

On Hopfer’s second point on appeal, he argued that the trial court erred in excluding evidence of Neenah’s failure to conduct Failure Mode and Effects Analysis (FMEA) testing when designing the grate system. The appellate court agreed that the trial judge correctly exercised its discretion to exclude testing evidence.

The court concluded that in a strict liability claim, the sole subject of inquiry is the defective condition of the product. Excluding this evidence was consistent with Missouri’s approach (not followed in many other states) that in claims of strict liability testing goes to defendant’s conduct in designing the grates, which is a consideration the jury should not be allowed to make in a strict liability case. Such a consideration may be appropriate in a negligence case, but Hopfer only proceeded on the single theory of strict liability.

The appellate court also declined Hopper's request to expand Missouri's strict liability law to allow for application of the prudent-manufacturer test. This test states that a product is unreasonably dangerous if a reasonably prudent manufacturer would not have produced and marketed the product in the condition that it was in at the time it was placed into the market. To the extent other states follow this approach, this appellate court explicitly rejected it under Missouri law.

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