Two Summary Judgments for Ladder Defendants Affirmed

November 23, 2011 by Sean Wajert

Ladders and scaffolds are two of the most valuable tools we know. And as the season for decorating approaches, we know MassTortDefense will soon be utilizing some, with due care of course.

Two federal courts of appeal have separately affirmed the dismissal of claims about personal injuries caused by allegedly defective Louisville Ladder Inc. products, because plaintiffs failed to offer sufficient expert testimony.

In Raymond B. Bielskis v. Louisville Ladder Inc., No. 10-1194 (7th Cir.), the court considered the appeal of a claim resulting from an accident that occurred when a Louisville Ladder mini-scaffold allegedly collapsed while plaintiff on an acoustical ceiling project. Following the accident that injured his hand and knee, Bielskis filed suit alleging the ladder company had been negligent in failing to properly test and inspect the threaded stud of the caster stem that allegedly caused the collapse and in failing to warn consumers of the alleged manufacturing defect.

The mini-scaffold is approximately four feet long with a hinged side that allows it to collapse for storage. The sides of the scaffold have rungs which are used to place planks where the user may stand. The entire unit is mobile: it has four wheels that may be locked while the user is working and unlocked when moving the unit. Plaintiff alleged that it had collapsed because the caster stem above one of the wheels had broken. Bielskis retained an expert (Mizen) to provide expert testimony at trial as to what caused the caster stem to break. He opined that the fracture was caused by excess tensile stress brought on by over-tightening the threaded stem. Mizen concluded that the brittle fracture could have been avoided by either attaching the wheel with a different mechanism than the threaded stud or by not tightening the stud "beyond making it simply snug to the leg base." Louisville Ladder also retained an expert who also concluded that the caster stem had sustained a brittle fracture. Unlike Mizen, however, he determined that the caster stem ultimately failed because it was too loose, not because it was too tight.

Louisville Ladder moved to bar Mizen's testimony, arguing that it was insufficiently reliable under Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579 (1993). In particular, Louisville Ladder faulted Mizen for his failure to utilize any recognized scientific methodology to reach his conclusions. The district court granted Louisville Ladder's motion, concluding that the methodology underlying Mizen's opinion was insufficiently reliable. The primary problem the court identified with Mizen's opinion was his leap, without data or testing, from the accepted premise that a crack without plastic deformation is a brittle fracture to his ultimate conclusion that the caster was too tight. When questioned as to what scientific methodology he used to reach this conclusion, Mizen replied that he had relied on "basic engineering intelligence" and "solid engineering principles that any other engineer would use."

After Louisville Ladder moved to exclude his testimony, Mizen supplemented his opinion with several articles that he claimed supported his conclusion. He located the articles by using the Internet search engine Google and typing in the phrase “brittle fracture.”

The court of appeals agreed the district court was within its discretion to conclude that Mizen’s methodology sounded more like the sort of talking off the cuff—without sufficient data or analysis—that courts have repeatedly rejected.

Mizen made no attempt to test his hypothesis. His theory was certainly capable of being tested. He did not take the time to measure the caster stem; he had no idea what alloy was used to construct the caster stem and made no effort to quantify its tensile strength or yield strength. In contrast, Louisville Ladder’s expert used digital calipers to measure the various components, created positive and negative replicas of the fracture surfaces so that the fractographic appearance of the surfaces could be examined in detail and then performed stress analysis calculations with the caster installed in two different configurations in order to assess the stresses present at the stud site with different degrees of tightness.

Likewise, Mizen’s proposed design alternatives did not survive scrutiny. When asked if those design alternatives had been tested, Mizen stated, “I don’t have to test it.” Likewise, he dismissed the question of whether any of his proposed design alternatives were used in the marketplace on scaffolds or had been recommended or required by any industry-wide standards for climbing equipment. Without more, there is no way to assure that Mizen’s proposed alternatives are “the product of reliable principles and methods.”

Absent expert testimony, summary judgment would follow, but plaintiffs argued res ipsa. While plaintiff showed a scaffold could be expected not to break and collapse under the weight of a single individual working on it, he failed to prove that the scaffold was defective at the time it left Louisville Ladder’s control. The mini-scaffold was already assembled when Bielskis’s employer gave it to him. Plaintiff did not present any evidence about who assembled the scaffold and whether it was assembled in conformity with the manufacturer’s warnings or specifications. Plaintiff's expert had neither reviewed the scaffold assembly instructions nor ascertained who had assembled the scaffold.

In Robert Cannioto et al. v. Louisville Ladder Inc., et al., No. 11-12885 (11th Cir.), the court concluded that the district court did not abuse its discretion in excluding the expert testimony of the plaintiffs’ principal expert witness. The court rejected plaintiffs "malfunction theory" under Cassisi v. Maytag Company, 396 So.2d 1140 (Fla. 1st DCA 1981). There, the Florida appellate court held that a legal inference is created that a product was defective at the time of injury or the time of sale when it malfunctions during normal use. The district court correctly concluded that the *Cassisi* inference was not applicable to this case because the ladder in question still existed and had been inspected by the plaintiffs’ expert. The record also demonstrated that the plaintiff failed to subject the ladder to a normal operation. The ladder was set up at too steep an angle at the time of plaintiff's fall. The court affirmed the grant of summary judgment in favor of the defendants.