UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 90-3912

(Summary Calendar)

ROLAND ROUSSELL, ET AL.,

Plaintiffs-Appellants-Appellees and Cross-Appellees,

and

KAISER ALUMINUM & CHEMICAL CORP.,

Intervenor-plaintiff-Appellant, Cross-Appellee,

VERSUS

AMCA INTERNATIONAL CORP., ETC., ET AL.,

Defendants-Appellees, Cross-Appellants.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 87 4442 E)

(February 17, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

EMILIO M. GARZA, Circuit Judge:*

The Plaintiff, Roland Roussell, was working for Kaiser Aluminum & Chemical Corporation ("Kaiser") in 1986, when a metal tank on Kaiser's premises, which tank had been manufactured by the

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* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Defendant, AMCA International Corporation ("AMCA"), ruptured, seriously injuring Roussell. Roussell filed this products liability action in state court in Louisiana, and it was then removed to federal district court by AMCA. Kaiser intervened, seeking to recover the cost of worker's compensation and medical benefits that it had paid to Roussell. The jury found in favor of AMCA, and the district court entered judgment accordingly. Roussell appeals, contending that (1) he is entitled to a new trial because the jury should have been instructed to consider Kaiser's negligence when deciding the issue of AMCA's liability; and (2) he is entitled to a new trial on the issue of damages because the jury committed manifest error by finding that AMCA's tank was neither defective nor unreasonably dangerous.[1] We affirm.

Roussell first contends that he is entitled to a new trial because the district court failed to instruct the jury to determine the fault of Kaiser. Roussell relies on *Gauthier v. O'Brien,* 618 So.2d 825 (La. 1993), where the Louisiana Supreme Court held that, in suits by employees, the fault of statutorily immune employers "must be assessed in order to appropriately assess the fault of third party tortfeasors." *Id.* at 826. Roussell's reliance on *Gauthier* is misplaced, because the court in *Gauthier* applied La. Civ. Code art. 2324 B, as amended in 1987.[2] Roussell was injured in 1986, and the 1987 amendment to art. 2324 B is applied only

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[1] Kaiser adopts Roussell's brief.

[2] *See Gauthier,* 618 So.2d at 831 (holding that "the assessment of employer fault is made mandatory by the 1987 amendment to La. Civ. Code art. 2324 B").

prospectively.[3] Therefore, neither the 1987 amendment to art. 2324 nor *Gauthier* is applicable, and Roussell's argument is without merit.[4]

Roussell also contends that he is entitled to a new trial on damages because the jury "failed to recognize the fact that a design change made [AMCA's] steel tank . . . defective or unreasonably dangerous." We will not disturb the jury's finding of fact "unless the facts and inferences point so strongly and overwhelmingly in favor of one party that the court believes that reasonable [jurors] could not arrive at a contrary verdict." *Vero Group v. ISS-Int'l Serv. Sys.,* 971 F.2d 1178, 1181 (5th Cir. 1992) (quoting *Boeing Co. v. Shipman,* 411 F.2d 365 (5th Cir. 1969)). Roussell does not argue that no reasonable jury could have found as

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[3] *See Morrison v. J.A. Jones Constr. Co., Inc.,* 537 So.2d 360, 365 (La. App. 4 Cir. 1988) (concluding that art. 2324 as amended in 1987 should be applied "prospectively only"); *Davis v. Commercial Union Ins. Co.,* 892 F.2d 378, 384 n.6 (5th Cir. 1990) (noting that 1987 amendment was not applicable to case arising from injuries suffered in 1985); *Myers v. Pennzoil Co.,* 889 F.2d 1457, 1462 n.2 (5th Cir. 1989) (same) (citing *Morrison*).

[4] Roussell contends that the holding in *Gauthier* governs this case, in spite of the Louisiana Supreme Court's reliance on the 1987 amendment to art. 2324 B, because *Gauthier* explicitly overruled two decisions of the Louisiana Supreme Court which applied the pre-1987 version of art. 2324 B. *See Gauthier,* 618 So.2d at 831 (overruling *Guidry v. Frank Guidry Oil Co.,* 579 So.2d 947 (La. 1991), and *Melton v. Gen. Elec. Co., Inc.,* 579 So.2d 448 (La. 1991)). We disagree. *Gauthier* overruled *Guidry* and *Melton* on the grounds that they were superseded by the 1987 amendment to art. 2324 B. *See Gauthier,* 618 So.2d 831 ("[W]e find that the assessment of employer fault is made mandatory by the 1987 amendment to La. Civ. Code art. 2324 B, and to that extent *Guidry,* and *Melton,* are no longer the law."). That holding is irrelevant to cases, such as this one, which are governed by the pre-1987 version of art. 2324 B.

the jury did in his case.[5] He merely points to evidence that the tank was defective or unreasonably dangerous, and attempts to impugn the qualifications of the jurors with the following argument:

> With all due respect to the seven women who served on the jury, including the data technician, florist, receptionist, homemaker, etc., it was readily apparent that the jury did not have the technical background and expertise to understand the technical arguments that were being made.
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> * * *
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> [T]he seven women on the jury . . . simply did not grasp the technical aspects of the trial . . . .

Brief for Roussell at 11-13. Roussell's argument hardly satisfies the *Boeing* standard for reversal of a jury verdict.

We therefore **AFFIRM**.

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[5] Roussell contends that the jury committed "manifest error."