UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-10071
Summary Calendar

ROBERT VEGA and VIRGINIA VEGA,

Plaintiffs-Appellants,

versus

LINDSAY MANUFACTURING CO.,

Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Texas
(5:93-CV-44-C)

(December 6, 1994)

Before POLITZ, Chief Judge, SMITH and WIENER, Circuit Judges.

PER CURIAM:*

In this diversity jurisdiction products liability case, Robert and Virginia Vega appeal the district court's grant of an adverse partial judgment on the inadequate warning aspects of their claim. We affirm.

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*Local Rule 47.5 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Background

The Vegas brought the instant lawsuit against Lindsay Manufacturing Company after Robert Vega was injured while attempting to repair a sprinkler system Lindsay had manufactured. The Vegas' claim was based primarily on theories of manufacturing and design defects in the sprinkler system. The manufacturing defect claim centered around allegations that the sprinkler system's cautionary warnings were inadequate.

Vega's injuries occurred April 22, 1991 on a farm where he had worked since 1973; a previous owner of the farm had purchased three new sprinkler pivots in 1981. Each sprinkler had ten towers, each tower had a motor at the center and two drive shafts extending from the pivot to a wheel. There was a fuse box on each tower, with an on/off switch located about 10-12 feet above the ground. One cannot reach the fuse box from the ground but must climb three steps to do so.

In the course of "checking" the sprinkler system before moving it to a different part of the farm, Vega noticed that a pin, part of the mechanism locking a gearbox to the rim of a tire, was broken. Vega assumed that the system was turned off because he did not hear the usual buzzing sound of the motor. When he attempted to remove the faulty pin, however, the motor "kicked in gear" and his left arm was caught by the drive shaft and severely mangled. As a result of this injury, Vega's hand and a part of his arm were amputated.

When the machine was manufactured around 1980-81, each of the

motors had a decal with cautionary instructions in black and yellow characters reading:

CAUTION

THIS MACHINE MAY START AUTOMATICALLY DO NOT SERVICE DRIVE SYSTEM UNTIL TOWER DISCONNECT IS IN "OFF" POSITION

Looking at pictures of the motor, Vega testified that he saw warning signs on top of the motor. It is unclear from Vega's testimony whether he had ever noticed those labels before.

In addition, each of the 20 drive shafts had a plastic cover or "shield" containing another cautionary label. Each label was marked:

CAUTION

1. **KEEP ALL SHIELDS IN PLACE.**
2. **AUTOMATIC EQUIPMENT MAY START AT ANY TIME.**
3. **DISCONNECT POWER SOURCE TO ADJUST OR SERVICE.**
4. **MAKE CERTAIN EVERYONE IS CLEAR OF EQUIPMENT BEFORE APPLYING POWER.**
5. **KEEP HANDS, FEET, AND CLOTHING AWAY FROM POWER DRIVEN PARTS IN MOTION.**

FAILURE TO HEED MAY RESULT IN PERSONAL INJURY

Vega testified on cross-examination that he had not read these warnings prior to servicing the machines because he could not read either English or Spanish. In fact, he had no specific recollection whether the drive shaft cover actually had a warning label, but conceded that "it must have." Vega also testified that he did not see any warnings about disconnect switches or about

anything else in the area where he was injured.

Plaintiffs introduced the expert testimony of an electrical engineer who testified that to be effective warnings on the sprinkler system should be placed where a hazard arises and should alert an individual both about the hazards and the consequences of failing to heed the warning.

At close of the Vegas' case-in-chief Lindsay moved for a partial directed verdict on the manufacturing claim. The judge granted the motion, explaining that he had "heard no evidence that the warnings or the adequacy of warnings had anything to do with Mr. Vega's accident." The design defect claim was submitted to the jury, which returned a verdict for Lindsay, finding that there was no design defect in the sprinkler irrigation system and that Robert Vega's own negligence proximately caused his injuries.

Analysis

On appeal, the Vegas claim that the district court improperly directed Lindsay's motion for a partial verdict. They argue that because adequacy of a warning is an issue for the trier-of-fact, the issue should have been submitted to the jury.

In reviewing the district court's decision to grant a judgment as a matter of law, we use the same standard of review that guided the district court.[1] We consider all the evidence, with all reasonable inferences, in the light most favorable to the non-moving party. If the facts and inferences point so strongly

[1] **Crosthwait Equip. Co. v. John Deere Co.**, 992 F.2d 525 (5th Cir.), cert. denied, 114 S.Ct. 549 (1993).

and overwhelmingly in favor of the moving party that reasonable jurors could not have arrived at a contrary verdict, then the motion was properly granted. If there is substantial evidence -- that is, evidence of such quality and weight that reasonable and fair-minded jurors might have ruled for Vega on the inadequate warning issue -- the motion should have been denied.

To demonstrate that a particular warning was inadequate, plaintiff must prove that (1) lack of adequate warnings or instructions rendered a product unreasonably dangerous,[2] and (2) the unreasonably dangerous product was a producing cause of plaintiff's injuries.[3]

Under Texas law the inquiry whether "a given warning is legally sufficient depends upon the language used and the impression that such language is calculated to make upon the mind

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[2]**Magro v. Ragsdale Bros., Inc.**, 721 S.W.2d 832 (Tex. 1986).

[3]**General Motors Corp. v. Saenz**, 873 S.W.2d 353, 357 (Tex. 1993) ("[P]laintiffs must show that but for . . . omission the accident would not have occurred. . . . A plaintiff must show that adequate warnings would have made a difference in the outcome, that is, that they would have been followed."); **Magro** (citing **General Motors Corp. v. Hopkins**, 548 S.W.2d 344 (Tex. 1977) (overruled on other grounds)); **Technical Chemical Co. v. Jacobs**, 480 S.W.2d 602, 605 (Tex. 1972) ("[W]hen a product is defective due to inadequate labeling, `the aspect of the defendant's conduct that made the sale of the product unreasonably dangerous must be found to have contributed to the plaintiff's injury.'") (quoting Dean W. Page Keeton, Products Liability -- Inadequacy of Information, 48 Tex.L.Rev. 398, 413 (1970)).

It is necessary to demonstrate cause whether the inadequate warning case proceeds on the theory of negligence or strict liability.

of the average user of the product."[4] The Vegas maintain that the sprinklers' warnings were inadequate because they could not be understood by a farmhand who could not read.

We need not consider the adequacy of the warnings because of our conclusion that the record is devoid of evidence establishing causation. Plaintiffs offered no proof, quite apparently because none was available, that any warnings that one could reasonably expect of this manufacturer, or of any manufacturer, would have prevented this most unfortunate accident. That being so, plaintiffs have not acquitted their responsibility to establish the producing cause. Absent that proof, there can be no recovery against this defendant for the resultant injury.

The trial court correctly granted partial judgment on the inadequate notice claim and its action is therefore AFFIRMED.

[4] **Bituminous Casualty Corp. v. Black & Decker Mfg. Co.**, 518 S.W.2d 868, 873 (Tex.Civ.App. 1974) (quoting **Walton v. Sherwin-Williams Co.**, 191 F.2d 277, 286 (8th Cir. 1951)).