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WHITE PAPER ALERT

Evidence - OSHA Violations

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Ronald Michael Gradle v. Doppelmayr USA, Inc.

Court of Appeal, Third District (February 27, 2004)

Whether evidence of Cal OSHA standards and violations are admissible to establish negligence per se has received different interpretations by California Courts of Appeal. In this case the Third District Court of Appeal hold they are admissible.

Gradle, an employee of Mammoth Mountain Ski Resort, was injured while working on ski lift equipment and lost a leg. He and his wife sued Doppelmayr, the company that designed and provided the equipment for a retrofit of the ski lift. At trial, the jury returned a verdict for Doppelmayr. The Gradles appealed, contending the trial court erroneously excluded evidence of the California Occupational Safety and Health Act (OSHA) rules and regulations to establish negligence per se.

The Court of Appeal reversed. The Court noted that the admissibility of such regulations is currently pending before the California Supreme Court. The Court further noted that recent amendments to Labor Code section 6304.5 allowed the admission of such evidence. Prior to 1999, the section limited application of Cal OSHA standards and safety orders to actions between an employee and his employer. As a result, prior court opinions consistently held that the regulations were not admissible in an employee's action against a third person.

The 1999 amendment stated that Cal OSHA standards were applicable to proceedings against employers for the purpose of enforcing employee safety. However, the amendment to the section changed the wording from "shall only be applicable" to "are applicable." The Court felt this change in language was significant because it lifted the restriction previously stated and no longer required the exclusion of such standards in third party cases. In the second paragraph of the amendment, there was language limiting the admissibility of evidence of the issuance of or the failure to issue a citation to personal injury actions between an employee and his employer. The Court suggested that other evidence of Cal OSHA standards would be admissible in a broader array of cases. The next sentence indicated that the sections of the Evidence Code relating to judicial notice and presumptions of negligence applied to Cal OSHA standards, as do any other statute, ordinance or regulation. The Court indicated this strongly supported the admission of Cal OSHA standards in any case where the requirements of those Evidence Code

sections were met. In this case, Gradle sought to admit these standards to prove negligence per se. The Court concluded that under the amended language of section 6304, Cal OSHA standards are admissible in actions against third parties other than the State of California.

Note

The California Supreme Court has this issue before it in *Elsner v. Uveges*, where review was granted on April 30, 2003. We expect a decision within a year on this issue.

If you have any questions or desire further information on this, or any other topic, please contact:

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