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New SC Products Liability Decision: Keeter v. Alpine Towers, Int'l

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This week, the South Carolina Court of Appeals released its opinion in Keeter v. Alpine Towers International, Inc. You can find the decision here on page 72 and here. As you may recall, I blogged about this jury verdict back on June 22, 2009. (See this post for more information about the verdict). There is some very important information in this case on how to properly structure a verdict form in a products liability case.

FACTUAL BACKGROUND: Plaintiff Larry Keeter ("Keeter") fell more than twenty feet from a climbing tower to the ground. He was seventeen at the time, broke a vertebra, and was rendered a permanent paraplegic. Alpine Towers ("AT") originally sold the climbing tower to an amusement park. Keeter's high school purchased the tower from the park and hired AT to move it, install it, and train high school faculty to safely use it. The sale contract identified AT as the "seller." The tower's central safety feature was a "belay system" which utilized four participants and system of pullies to control the ascent/descent of a climber. As Keeter was climbing, the rope in the belay system became tight. When someone assisting (the "belayer") tried to free the rope, she lost the assistance of the belay device, could not control the rope, and Keeter fell.

PROCEDURE: Keeter and his parents sued for (1) strict liability; (2) negligent design of the climbing tower, and (3) negligence in failing to properly train high school faculty. (A copy of the Amended Complaint can be found here). Plaintiffs also filed suit against the belayer for negligence. Plaintiffs settled with the high school before filing suit and dismissed the belayer before trial. The jury returned a verdict on each cause of action. It awarded $500 for strict liability, $900,000 in actual damages and $160,000 in punitive damages for negligent design, and $2,500,000 in actual damages and $950,000 in punitive damages for AT's negligence in training the high school's faculty. The jury also returned a verdict for Keeter's parents for $240,000 in actual damages. After hearing post-trial motions, the court required Keeter to elect between his causes of action and ordered that the high school's settlement be set off against Keeter's recovery. Keeter filed a motion requesting the court to enter a cumulative amount rather than requiring him to elect, and the court denied the motion. The court entered judgment for $2,500,000 in actual damages and $950,000 in punitive damages on the negligent training cause of action. Both Plaintiffs and AT appealed.

ISSUES: (1) Whether the trial court was in error in denying AT's directed verdict, post-trial, and new trial motions, including the sufficiency of evidence for all causes of action, whether the chain of causation was broken by intervening and superseding negligent acts, the sufficiency of evidence for punitive damages, and apportionment of fault; and (2) whether the trial court erred in treating Plaintiffs' verdicts as "three awards" and requiring him to elect his remedy.

DISPOSITION: The South Carolina Court of Appeals (1) affirmed denial of AT's motions, and (2) reversed the trial court's interpretation of the jury verdict and remanded with instructions that it enter judgment in Keeter's favor against AT for $3,400,500 in actual damages and $1,100,000 in punitive damages.

RULES AND OPINION: The first half of the opinion addresses AT's appeal, which is summarized as follows:

Strict Liability – There was sufficient evidence that a reasonable alternative design would have prevented Keeter's fall. The tower incorporated a device called "Trango Jaws" in the belay system, which relied on the absence of human error to safely belay a climber. Plaintiff's experts introduced evidence that a device called a "GriGri" would automatically stop the rope if the belayer lost control and not rely on the absence of human error.

Negligent Design – There was sufficient evidence to support a negligent design theory. Plaintiffs relied on the failure to incorporate the GriGri for this theory, but Plaintiffs also introduced evidence that AT conducted a ten-year study that the majority of accidents on climbing towers resulted from human error and belayers dropping climbers. Despite this information, AT did not design for human error by incorporating a locking device. Plaintiff also introduced evidence of breach duty of reasonable care in designing warnings and instructions for the tower. AT omitted an instruction to have someone within reaching distance of active belay ropes and beside the climber. There also should have been end user warnings for first-time climbers and belayers.

Negligent Training – AT did not provide certain materials to high school faculty that it used in other training sessions (i.e., a syllabus). AT also did not teach faculty supervisors to stand directly behind a belayer and to assist students in avoiding errors. AT also did not teach the high school to test students' competency before allowing them to belay a climber. Therefore, there was sufficient evidence to support a negligent training theory.

Intervening Causation – "'For an intervening act to break the causal link and insulate the tortfeasor from further liability, the intervening act must be unforeseeable.'" (Quoting McKnight v. S.C. Dep't of Corr., 385 S.C. 380, 387, 684 S.E.2d 566, 569 (Ct. App. 2009)). There was ample evidence to support that the actions of the high school and belayer were foreseeable, and therefore the chain of causation was not broken to insulate AT from liability. AT knew the high school would be using students as belayers, and their ten-year study informed them of the human error risks. The same human error that resulted in Keeter's injury was not only foreseeable by AT, it was actually foreseen.

Punitive Damages – With regard to Plaintiffs' claim that AT recklessly designed the tower, there was evidence that AT knew the majority of falls were caused by human error, could have used an alternative design to account for human error, and the cost of the alternative design was inconsequential. Therefore, this was evidence that AT was "conscious of the probability of resulting injury" from its negligence, and therefore reckless. With regard to Plaintiffs' claim that AT was reckless in failing to properly train high school faculty, there was sufficient evidence that AT knew the high school would use student belayers and that they were less attentive and more susceptible to error. Nevertheless, AT still failed to properly train faculty, did not include certain materials in their training processes, removed certain instructions about where to stand in relation to a climber, failed to teach competency testing, and did not inform the high school of the option of using the GriGri. This was sufficient evidence of recklessness.

Apportionment of Fault – Because of the court's ruling on punitive damages, it was unnecessary to address the issue of apportionment of fault because the apportionment statute "does not apply to a defendant whose conduct is determined to be . . . reckless." (Quoting S.C. Code § 15-38-15(F)).

The second half of the opinion addresses Plaintiffs' appeal and election of remedies. "'Election of remedies involves a choice between different forms of redress afforded by law for the same injury . . . . It is the act of choosing between inconsistent remedies allowed by law on the same set of facts.'" (Quoting Taylor v. Medenica, 324 S.C. 200, 218, 479 S.E.2d 35, 44-45 (1996)). The court pointed out that Keeter asserted three causes of action, but sought only one remedy, i.e., "damages." "When a plaintiff seeks only one remedy, there is nothing to elect." Therefore, the court held the doctrine of election of remedies did not apply. The doctrine applies to election of "remedies" and not election of "verdicts." The court cited to Creach v. Sara Lee Corp., 331 S.C. 461, 502 S.E.2d 923 (Ct. App. 1998) as support (and you can see a short summary of that case in this post).

However, the court also cited to the importance of not allowing a double recovery. To prevent a double recovery, the court must interpret the verdict to determine the jury's intent. The court concluded the trial court erred in its interpretation of the verdict to be "three awards" and therefore "inconsistent." The error arose with the jury form, which you can find here. The verdict form was correct in that it required the jury to write its verdict for each cause of action. However, because Keeter only sought one remedy – damages – and because that remedy could not vary from one cause of action to another, the trial court should have required the jury to write one amount for the damages (and not separate amounts for each cause of action). "The use of three blanks for damages in the verdict form left the verdict ambiguous as to the amount of damages the jury intended to award." To determine the jury's intent in an ambiguous verdict, the court should consider the entire proceedings to determine what the jury intended. In reviewing the record, the jury appeared to intend to award a cumulative amount, and it is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found. Therefore the court found the jury intended the verdicts to be added together for a total verdict in Keeter's favor of $3,400,500 actual damages and $1,100,000 in punitive damages.

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About Brian Comer

Brian Comer is a shareholder and Chair of the firm's Products Liability Practice Group. Brian was a magna cum laude graduate of the University of South Carolina Honors College where he majored in International Studies and Economics. He also served as Student Body President during his undergraduate career. Brian received his Juris Doctor from the University of South Carolina School of Law and has an International Masters in Business Administration from the University's Moore School of Business. During law school, he was a member of the South Carolina Law Review and the Order of Wig and Robe. Prior to joining Collins & Lacy, Brian was a partner with a large national firm based in Columbia, South Carolina.

Brian is the founder and contributing author of South Carolina Products Liability Law Blog, for individuals and product manufacturers who are interested in this area of law. His goal is to provide current information on trends in products liability law in the Palmetto State.