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OxyChem Decision Clarifies Premises Liability, Duty of Care for Prior Owners

Energy Law, Environmental / January 8, 2016 / Demetri J. Economou

On Friday, the Texas Supreme Court issued a significant decision covering premises liability. Specifically, it determined whether premises liability exists for a prior owner that designed and implemented a dangerous condition on the land, but then sold the land prior to the injury.

The Acid-Addition System and the Accident

Occidental Chemical Corporation ("OxyChem") owned and operated a chemical plant in Bayport, Texas, for the production of triethylene glycol ("TEG"), used primarily to remove water from natural gas and natural gas liquids.

TEG production depends on specially maintained pH levels, regulated by adding acid to the TEG production tank. It was for this purpose that OxyChem planned, designed and installed the acid-addition system that ultimately caused the plaintiff's injuries at the Bayport plant.

The plaintiff was injured when pressurized acid from the acid-addition system was released into his face, causing serious damage to his eyes.

Since its installation in 1992, OxyChem operated the acid-addition system without incident. In 1998, OxyChem sold the entire Bayport plant to Equistar Chemicals, L.P., which likewise operated the acid-addition system until the plaintiff's injury. At the time of the injury in 2006, OxyChem had been gone from the Bayport plant for 8 years.

Nonetheless, the acid-addition system was designed and installed at the plant by OxyChem; that much was undisputed.

Premises Liability for Prior Owner-Designers like OxyChem?

The First Court of Appeals and the Supreme Court ultimately differed on the application of premises liability in this case.

Generally, a property owner owes a duty of care to people for dangerous conditions on its property when it:

- controls the premises; and
- is in a superior position to know of and remedy the dangerous condition.

The acid-addition system, such that it could expel pressurized acid in the face of a technician, constituted a dangerous condition – this much was evident.

However, OxyChem was out of the picture at the time of the injury. It no longer "controlled" the Bayport plant, and was certainly in no position to remedy any dangerous conditions in the plant.

Surely, this meant OxyChem was free from liability. *Wrong*, said the court of appeals.

Instead, the court of appeals crafted a specific rule for prior owners who designed dangerous conditions prior to selling the property. Essentially, the court said that premises liability outlived the ownership of *owner-designers* of dangerous conditions – specifically pointing out "industrial plant owner[s] who employed design professionals."

The Supreme Court disagreed and reversed. Relying in part on the maxim *caveat emptor*, the Supreme Court confirmed that an owner's premises liability for dangerous conditions upon property ends with its sale of the property (unless otherwise agreed upon).

No Texas law supports the alternative, owner-designer exception. The Supreme Court's reversal is therefore important for property owners who design (or have designed) fixed improvements to property with the capability to become dangerous conditions, especially owners of industrial property singled out by the appeals court.

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