In The

Supreme Court of Virginia

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
OCT 19 2010
RICHMOND, VIRGINIA

RECORD NO. 092567

ROYAL INDEMNITY COMPANY,
AS SUBROGEE OF FIRST CENTRUM, LLC AND
CENTRUM PRINCE WILLIAM, LP, AND
AMERICAN EMPIRE SURPLUS LINES INSURANCE COMPANY,
AS SUBROGEE OF FIRST CENTRUM, LLC AND
CENTRUM PRINCE WILLIAM, LP,

Appellants,

v.

SIMPLEXGRINNELL, LP,

Appellee.

REPLY BRIEF OF APPELLANTS

Robert Tayloe Ross (VSB No. 29614)
Kevin T. Streit (VSB No. 45024)
MIDKIFF, MUNCIE & ROSS, P.C.
300 Arboretum Place, Suite 420
Richmond, Virginia 23236
(804) 560-9600 (Telephone)
(804) 560-5997 (Facsimile)
rross@midkifflaw.com
kstreit@midkifflaw.com

Counsel for Appellants

Michael J. Izzo, Jr. (*Pro Hac Vice*)
Paul R. Bartolacci (*Pro Hac Vice*)
Lawrence F. Walker (*Pro Hac Vice*)
COZEN O'CONNOR
1900 Market Street
Philadelphia, Pennsylvania 19103
(215) 665-2000 (Telephone)
(215) 665-2013 (Facsimile)
mizzo@cozen.com
pbartolacci@cozen.com
lwalker@cozen.com

Counsel for Appellants

THE LEX GROUP ♦ 1108 East Main Street ♦ Suite 1400 ♦ Richmond, VA 23219
(804) 644-4419 ♦ (800) 856-4419 ♦ Fax: (804) 644-3660 ♦ www.thelexgroup.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

THE TRIAL COURT ERRED IN CONCLUDING THAT THE F960 Q46 SPRINKLER HEADS WERE ORDINARY BUILDING MATERIAL 1

THE COURT SHOULD RECOGNIZE A POST-SALE DUTY TO WARN CAUSE OF ACTION UNDER THE FACTS OF THIS CASE 11

THE TECHNICAL DATA SHEET SUPPLIED BY THE DEFENDANTS CREATED A WARRANTY OF FUTURE PERFORMANCE 14

CONCLUSION 15

CERTIFICATE OF SERVICE 17

TABLE OF AUTHORITIES

Page(s)

CASES

Cape Henry Towers, Inc. v. National Gypsum Co.,
299 Va. 596, 331 S.E.2d 476 (1983) 2

Comstock v. General Motors Corp.,
99 N.W.2d 627 (Mich. 1959) 13

Cover v. Cohen,
461 N.E.2d 864 (N.Y. 1984) 13-14

Crowston v. Goodyear Tire & Rubber Co.,
521 N.W.2d 401 (N.D. 1994) 14

Dixon v. Jacobsen Mfg. Co.,
637 A.2d 915 (N.J. Super.Ct.App.Div. 1994) 13

Eagles Court Condominium Unit Owners Ass'n v. Heatilator, Inc.,
239 Va. 325, 389 S.E.2d 304 (1990) 9

Fell v. Kewanee Farm Equip. Co.,
457 N.W.2d 911 (Iowa 1990) 13

Harris v. TI, Inc.,
244 Va. 63, 413 S.E.2d 605 (1992) 14

Hodder v. Goodyear Tire & Rubber Co.,
426 N.W.2d 826 (Minn. 1988) 13

In re Sugar Industrial Antitrust Litigation,
579 F.2d 13 (3d Cir. 1978) 3

Integrity Floor Covering, Inc. v. Broan Nutone LLC,
521 F.3d 914 (8th Cir. 2008) 8

Island Creek Coal Co. v. Lake Shore, Inc.,
832 F.2d 274 (4th Cir. 1987) 14

Jamerson v. Coleman-Adams Constr., Inc.,
No. 091685, slip op. (September 16, 2010) 4, 5

Kozlowski v. John E. Smith's Sons Co.,
275 N.W.2d 915 (Wis. 1979) 14

Luebbers v. Ft. Wayne Plastics, Inc.,
255 Va. 368, 498 S.E.2d 911 (1998) 1

McAlpin v. Leeds & Northrup Co.,
912 F. Supp. 207 (W.D. Va. 1996) 14

Novak v. Navistar Int'l Transp. Corp.,
46 F.3d 844 (8th Cir. 1995) 14

Owens-Illinois, Inc. v. Zenobia,
601 A.2d 633 (Md. 1992) 13

Patton v. Hutchinson Wil-Rich Mfg. Co.,
861 P.2d 1299 (Kan. 1993) 13

Rash v. Stryker Corp.,
589 F. Supp. 2d 733 (W.D. Va. 2008) 12

Red Wing Motor Investors v. Red Wing Fire Department,
552 N.W. 2d 295 (Minn. Ct. App. 1996) 7

Smith v. F.M.C. Corp.,
754 F.2d 873 (10th Cir. 1985) 14

Walton v. Avco Corp.,
610 A.2d 454 (Pa. 1992) 14

STATUTES

La. Rev. Stat Ann. § 9:2800.57(C) (West 1991) 13

Ohio Rev. Code Ann. § 2307.76 (Banks-Baldwin 1988) 13

Va. Code § 801-250 2

Wash. Rev. Code § 7.72.030(1)(c) 14

OTHER AUTHORITY

Restatement (Third) of Torts: Products Liability § 10 12

THE TRIAL COURT ERRED IN CONCLUDING THAT THE F960 Q46 SPRINKLER HEADS WERE ORDINARY BUILDING MATERIAL

SimplexGrinnell's argument that the F960 sprinkler heads are ordinary building materials has selectively taken non-controlling "factors" from various decisions of this Court and has assigned them controlling significance. SimplexGrinnell's arguments relegate this precisely engineered product to the non-functional status of a roll of roofing paper or a perforated swimming pool drain. This is not the nature of the F960 sprinkler head.

Relying on the phrase of a sale in bulk through a distributor found in Luebbers v. Ft. Wayne Plastics, Inc., 255 Va. 368, 498 S.E.2d 911 (1998) SimplexGrinnell claims the F960 heads were sold in bulk through distributors. The F960 heads are not a bulk commodity like fertilizer or fuel. They are individually engineered and manufactured products designed to provide specific water spray patterns at designated discharge pressures. They are specifically defined as a "mechanical device" by the corporate designee of Tyco. (J.A. 375). They are not sold in bulk but are individually boxed and sold in lots of 20 to 30 sprinkler heads per box.

The argument that the F960 heads have no "independent function" until they are connected to a water delivery system misses the point. Equipment which requires a power source or, in this case, a water supply

will have no independent function if it is never removed from the box and installed as intended. Any such device could be characterized as a "mere paperweight" if it is not used as intended.

The sprinkler heads are not required to be designed exclusively for the River Run Apartments in order to be classified as equipment. The statute of repose imposes no such requirement, referring only to "any equipment or machinery installed in a structure upon real property." VA Code Ann. § 801-250. If exclusive design for the particular structure was required, the exception for manufacturers of "any equipment or machinery" would be rendered virtually meaningless.

One factor discussed by this Court in resolving this issue is whether the equipment was installed at the direction of architects, engineers or contractors or was controlled in some manner by the manufacturer. Cape Henry Towers, Inc. v. National Gypsum Co., 299 Va. 596, 331 S.E.2d 476 (1983). That control is evident in this case by reason of the mandatory installation instructions provided by Grinnell and the fact that its sister corporation (now SimplexGrinnell) did the actual installation. The technical data sheet does not contain mere "guidelines" but contains requirements for installation. The installation requirements are couched in mandatory terms and are not discretionary. Rather than exercising no control, the

record demonstrates that Grinnell and its sister corporation had complete control over the installation of the F960 sprinkler heads. Legally, Grinnell and its division were one and the same. "A division of a corporation is not a separate entity, but is the corporation itself." In re Sugar Industrial Antitrust Litigation, 579 F.2d 13, 14 (3d Cir. 1978).

The trial court's comment that the sprinklers were "essential to the building" is not accurate. The F960 heads are not a construction material needed for the integrity of the building. They add fire protection for the balconies of the units. Also, neither the court's opinion nor any argument advanced to the court establishes that the Virginia building code required sidewall sprinklers on outside balconies. Similarly, SimplexGrinnell's building code argument is also insubstantial as a controlling factor. A building code may require the installation of equipment, but that does not mean that the equipment is converted into "ordinary building materials".

The critical undisputed facts in the record are that the F960 is an engineered piece of equipment which is completely assembled and quality tested by the manufacturer and sold as a completed product. These undisputed facts were ignored by the trial court in reaching its conclusion that the F960 heads were ordinary building materials. The court's conclusions are reviewable *de novo* and should be reversed.

The sprinkler heads are not fungible goods or generic material like rolls of pool liner and metal drain covers. The F960 sprinkler head is not like a roll of roofing paper, a bushel of grain or a tank of gas. F960 heads can not be cut to size and nailed into place to make a door jam like a piece of lumber. They must be installed precisely in accordance with manufacturer's instructions or they will not work. Architects and engineers did not decide how the F960 heads were to be assembled or tested, nor did they decide how they should be installed. The manufacturer performed all these functions.

This Court recently addressed the Virginia statute of repose in Jamerson v. Coleman-Adams Constr., Inc., No. 091685, slip op. (September 16, 2010). The Court reiterated the factors to be considered in determining whether a sprinkler head is "machinery or equipment" or an "ordinary building material"; i.e., whether there were any warranties associated with the product, whether there was close quality control, whether there were installation instructions, whether the product was assembled at the building and whether it was mass produced. The factual scenario in Jamerson is quite distinguishable from the issue here. Jamerson involved a steel platform and pole which collapsed and the Court

easily concluded that those items were ordinary building materials that were incorporated into the structure of the building.

The detailed concurring opinion in Jamerson proposed that it was time for the Virginia Supreme Court to set aside the judicially created "ordinary building materials" concept because it was unworkable. The concurring opinion suggests a return to "first principles"; looking to the plain language of the statute and accepted definitions of equipment. As noted previously, even the manufacturer of the sprinkler head refers to it as a "mechanical device" (J.A. 375), a description consistent with the applicable building code which defines a sprinkler as a "device" which is attached to a water supply system. Under the current common law factors to be considered by the Court, and pursuant to the concurring opinions' suggestion in Jamerson that the "ordinary building material" concept should be disregarded, the F960 sprinkler head qualifies as equipment and SimplexGrinnell is not entitled to protection under the statute of repose.

The concurring opinion presents a sensible approach to this complex analysis. Rather than struggle with what is an "ordinary building material", using factors which may or may not get to the nub of the issue, it is more fruitful to consider the nature of the item and whether it is adjunct to or essential to the existence of a building qua building. Sprinklers are not

necessary or essential to the construction of buildings. They are adjunct equipment provided to the buildings for a specific purpose, i.e., fire protection. If the sprinkler heads were removed, the building would still stand. It is the essential nature of the sprinkler heads that define them as equipment.

Additionally, the Court should look to the policy behind the statute of repose. The policy is to protect those who design and construct buildings. They have no opportunity for quality control, testing and engineering which are performed by manufacturers of equipment or machinery. There is no overriding policy consideration to protect manufacturers of defective products merely because they are either placed in a building or have the function of protecting the building from adverse consequences of fire.

Engineered sprinkler heads are a completed product. In this case, their failure was entirely due to design defects and internal conditions which were solely in the control of the manufacturer. The nature of a sprinkler head is that of equipment. It is not a building material by any common sense analysis. A building cannot be constructed with sprinkler heads. This is evident by the fact that 35 million virtually identical sprinkler heads were recalled by Tyco, removed from the buildings in which they were installed, and were replaced with safe ones. During the process, the

buildings did not collapse. No one would argue that a portable fire extinguisher, attached to a building wall, was an ordinary building material. If the fire extinguisher failed because of a manufacturing defect, its manufacturer should be called upon to defend its product and not benefit from the statute of repose. The sprinkler heads in the instant case are no different. They failed because of an internal manufacturing defect. They are like the portable fire extinguisher with one exception – they are attached to the end of a pipe which provides a water supply.

The two Minnesota cases referenced by SimplexGrinnell are not controlling here. In Red Wing Motor Investors v. Red Wing Fire Department, 552 N.W. 2d 295 (Minn. Ct. App. 1996) the owner sued a contractor for improperly pitching interior pipes in a sprinkler system. The pipes were viewed by the court as ordinary building materials and the installing contractor was protected by the statute of repose. There was no issue concerning defective design or manufacture of sprinkler heads. Importantly, the court noted that if the sprinkler heads were defective, there may be a different result. That case does not reach the issue that this Court is required to decide. The Red Wing court's comment, however, suggests that defectively engineered sprinkler heads would not be held to be "ordinary building materials".

The other Minnesota case, Integrity Floor Covering, Inc. v. Broan Nutone LLC, 521 F.3d 914 (8th Cir. 2008) is also not precedential. The Federal Court was predicting what the Minnesota Supreme Court might decide if faced with the issue before it. The question was whether an interior bathroom fan was ordinary building materials. The court suggested that because the fan was incorporated into the building structure and was required by a building code it should be considered ordinary building materials. The Minnesota Supreme Court has not, to date, adopted the Eighth Circuit's view. Moreover, the fact that an item is incorporated into a building is not a disqualifying factor under the Virginia Statute of Repose; nor is there any requirement that the equipment be "large scale", as found by the Eighth Circuit.

SimplexGrinnell denies that it is basically the same company that designed and manufactured the F960 sprinkler heads. However, support for that fact is clearly found in the record. It has been stipulated by the parties that Grinnell Corporation (the predecessor to Tyco Fire Products) designed the sprinkler heads. (J.A. 95) At the time of the design and sale of the sprinkler head, Grinnell Fire Protection Systems was a division of Grinnell Corporation. (J.A. 455). SimplexGrinnell is the successor to Grinnell Fire Protection Systems Company. (J.A. 94). There is a clear,

direct and consecutive relationship between SimplexGrinnell, Grinnell Fire Protection Systems, Grinnell Corporation and Tyco Fire Products. Grinnell Fire Protection Systems Company was not an independent distributor who separately purchased the F960 heads in bulk for this job. Rather, Grinnell Fire Protection, a division of Grinnell Corporation, acting as the installer, simply removed them from Grinnell's own internal inventory. (J.A. 454-458).

Eagles Court Condominium Unit Owners Ass'n v. Heatilator, Inc., 239 Va. 325, 329, 389 S.E.2d 304, 306 (1990), also does not protect SimplexGrinnell. Because there was an insufficient record to determine whether the fireplace system was equipment or "ordinary building materials," the Court remanded for development of a record as to the supplier of the fireplace components and its manufacturer, but sustained the plea in bar as to the assembler and installer. SimplexGrinnell argues that it is merely an installer. SimplexGrinnell overlooks the fact that it supplied the defective sprinkler heads, removed them from its inventory and installed them. As an installer, SimplexGrinnell may be protected, but not as a supplier and/or manufacturer of the equipment. SimplexGrinnell's argument that the exception in the statute of repose is intended only for those who play an integral role in the design and manufacture of the

equipment and machinery, is wrong. The clear statutory language states that the exception applies to manufacturers and suppliers. No language in the statute supports SimplexGrinnell's position.

Tellingly, SimplexGrinnell agrees with plaintiffs' position as to its predecessor Grinnell Fire Protection Systems Company. It argues that there is a category of installers who do not get the protection of the statute if they installed a product which they also manufactured. Under this scenario, Simplex argues that "the installer would be considered a manufacturer and subject to the exception." These are precisely the facts of the instant case. Grinnell Fire Protection Systems Company (now SimplexGrinnell), a division of Grinnell Corporation (the manufacturer), actually installed the equipment. SimplexGrinnell also concedes that an installer who supplied a product would likewise fall within the exception. There is no question, in this case, that Grinnell Fire Protection Systems Company supplied the defective sprinkler heads and installed them. Thus, SimplexGrinnell (the successor to Grinnell Fire Protection Systems Company, a division of Grinnell Corporation) manufactured and supplied a defective piece of "equipment" that caused the plaintiffs' damages.

THE COURT SHOULD RECOGNIZE A POST-SALE DUTY TO WARN CAUSE OF ACTION UNDER THE FACTS OF THIS CASE.

The trial court's dismissal of the post-sale duty to warn (Count IV) was properly objected to and preserved for this appeal. The plaintiffs, not given an articulated basis for the court's order, analyzed that either (1) the court believed no valid cause of action existed in Virginia law or (2) if valid, the tort claim was barred by the statute of repose. Plaintiffs have raised those issues in this appeal after proper objection.[1] Additionally, the plaintiffs have provided the court with ample factual support indicating that all defendants knew of the specific defects in the "O ring" technology in the F960 sprinkler head but failed to provide adequate warning to River Run. There is a clear and continuing relationship between SimplexGrinnell and the Grinnell corporate entities that manufactured and installed these sprinklers.

Whether the theory against SimplexGrinnell is characterized as a post sale duty to warn or a continuing duty to warn, the policy of this

[1] The plaintiffs specifically argued that the statute of repose did not bar their post sale duty to warn claim or the allegations relating to SimplexGrinnell's breach of its maintenance and inspection contracts. (J.A. 177). Further, the plaintiffs objected to the Court's orders, preserving their appellate rights as to whether the statute of repose barred any claims against SimplexGrinnell and preserving their objection to the Court's Order that the plaintiffs' post sale duty to warn and post installation theories were properly dismissed by the Court. (J.A. 1744).

Commonwealth is best served by imposing such a duty on SimplexGrinnell. The public policy to protect life and property from harm when a party with superior knowledge can prevent that harm, must outweigh any burden to that party when it is reasonable to require a warning, advice or instruction that could have prevented serious damage. Here, there is no unreasonable burden on SimplexGrinnell. SimplexGrinnell was actually at the River Run property working on the sprinkler heads in question and performing testing and inspections of the sprinkler system. The last inspection of the sprinkler system by SimplexGrinnell occurred in 2002. At this point, the defective O-ring technology that caused these sprinklers not to operate was well known in the industry and specifically known by the defendants in this case.[2]

As proposed by the Court in Rash v. Stryker Corp., 589 F. Supp. 2d 733 (W.D. Va. 2008), the Restatement (Third) of Torts: Products Liability § 10 provides a workable theory for post-sale liability arising out of the failure to warn. Under the Restatement approach, a party may be liable for a failure to provide a warning after the sale or distribution of a product if a reasonable person would provide a warning. The "reasonableness" is to be

[2] The VADA has attempted to file an amicus curiae brief on this issue. Plaintiffs have opposed the filing of the brief since it was filed without consent and in violation of the newly adopted Supreme Court rules relating to amicus curiae filings.

judged based upon the following factors. Should the seller know that the defective product poses a substantial risk of harm? Can the person who may be harmed be reasonably identified and is that person unaware of the risk of harm? Can a warning be effectively communicated and acted upon? Is the risk of harm sufficiently great to justify the burden of providing a warning?

Under the facts of this case, SimplexGrinnell failed to act reasonably in providing such a post sale/post installation warning. In effect, this post installation claim against SimplexGrinnell is not unlike a garden variety negligence claim. SimplexGrinnell failed to act reasonably given its knowledge of the dangers and defects associated with the O-ring sprinkler technology, knew the O-ring sprinkler technology was incorporated into the sprinkler system at River Run, performed inspection and testing work on the sprinkler system at River Run after acquiring that knowledge and failed to provide any warning or instruction to the River Run management team.[3]

---

[3] The growing trend and majority rule is to impose a post sale duty to warn under appropriate circumstances. See, e.g., Fell v. Kewanee Farm Equip. Co., 457 N.W.2d 911 (Iowa 1990); La. Rev. Stat Ann. § 9:2800.57(C) (West 1991); Owens-Illinois, Inc. v. Zenobia, 601 A.2d 633 (Md. 1992); Comstock v. General Motors Corp., 99 N.W.2d 627 (Mich. 1959); Hodder v. Goodyear Tire & Rubber Co., 426 N.W.2d 826 (Minn. 1988); Ohio Rev. Code Ann. § 2307.76 (Banks-Baldwin 1988); Patton v. Hutchinson Wil-Rich Mfg. Co., 861 P.2d 1299 (Kan. 1993); Dixon v. Jacobsen Mfg. Co., 637 A.2d 915 (N.J. Super.Ct.App.Div. 1994); Cover v. Cohen, 461 N.E.2d 864 (N.Y.

In accordance with Harris v. TI, Inc., 244 Va. 63, 413 S.E.2d 605 (1992) this Court should recognize a post sale duty to warn because the evidence establishes close interaction between the successor company and the original manufacturer and installer.

Finally, a post sale duty to warn theory based on negligence cannot be encompassed by the statute of repose since the cause of action did not arise until the defendants obtained specific knowledge that the "O ring" technology in the F960 sprinkler was deficient. The time for running of the statute of repose is measured from the completion of construction. On the other hand, the duty to warn does not arise until such time as a party learned facts which required a duty to speak and there is harm resulting from that failure to act.

THE TECHNICAL DATA SHEET SUPPLIED BY THE DEFENDANTS CREATED A WARRANTY OF FUTURE PERFORMANCE

Plaintiffs believe that they have adequately treated this issue in their main brief. Respectfully, it appears that the trial court did not understand

---

1984); Crowston v. Goodyear Tire & Rubber Co., 521 N.W.2d 401 (N.D. 1994); Smith v. F.M.C. Corp., 754 F.2d 873 (10th Cir. 1985) (applying Oklahoma law); Walton v. Avco Corp., 610 A.2d 454 (Pa. 1992); Novak v. Navistar Int'l Transp. Corp., 46 F.3d 844 (8th Cir. 1995) (applying South Dakota law); Island Creek Coal Co. v. Lake Shore, Inc., 832 F.2d 274, 280-81 (4th Cir. 1987); McAlpin v. Leeds & Northrup Co., 912 F. Supp. 207 (W.D. Va. 1996); Wash. Rev. Code § 7.72.030(1)(c) (1992); Kozlowski v. John E. Smith's Sons Co., 275 N.W.2d 915 (Wis. 1979).

the nature of the warranty claim asserted in Count II. The trial court appeared to focus on the one year standard warranty and refused to acknowledge undisputed testimony that the sprinkler head could not be tested or functioned to determine whether it would work. No magic words are required to create a warranty under the Virginia Uniform Commercial Code.

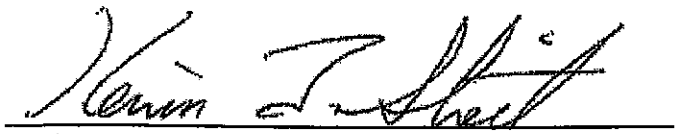
The intent in describing the F960's function was to define its intended future performance. This affirmation of fact describes the future performance of the F960 sprinkler head. The time parameter is set as the time of the fire. It is the essence of the purpose of this sprinkler. A purchaser would be justified in believing that the sprinkler head would operate when a fire occurs. This Court should find that the language constitutes a warranty of future performance which takes it outside of the traditional Uniform Commercial Code statute of limitations.

CONCLUSION

For all of the foregoing reasons, this Court should reverse the Trial Courts Orders and hold that the statute of repose does not apply to SimplexGrinnell as a manufacturer and supplier of equipment to the River Run Complex. This Court should also reverse the trial court's dismissal of Count II of plaintiff's Amended Motion for Judgment and allow a cause of action for post sale duty to warn (Count IV) to proceed to trial.

Respectfully submitted, this 19th day of October, 2010.

By Counsel:



Robert Tayloe Ross (VSB No. 29614)
Kevin T. Streit (VSB No. 45024)
Midkiff, Muncie & Ross, P.C.
300 Arboretum Place, Suite 420
Richmond, Virginia 23236
(804) 560-9600 (Telephone)
(804) 560-5997 (Facsimile)
rross@midkifflaw.com
kstreit@midkifflaw.com
Counsel for Petitioners – Appellants

OF COUNSEL:
Michael J. Izzo, Jr., Esquire
Paul R. Bartolacci, Esquire
Lawrence F. Walker, Esquire
Cozen O'Connor
1900 Market Street
Philadelphia, Pennsylvania 19103
(215) 665-2000 (Telephone)
(215) 665-2013 (Facsimile)
mizzo@cozen.com
pbartolacci@cozen.com
lwalker@cozen.com

Co-Counsel for Petitioners – Appellants
(Pro Hac Vice)

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 5:26(h) on this 19th day of October, 2010, fifteen bound copies of this Reply Brief of Appellant and have been hand-filed with the Clerk's Office of the Supreme Court of Virginia, and three bound copies of the Reply Brief of Appellant have been served via UPS Next Day Air to opposing counsel at the following addresses:

Mark D. Loftis
Frank K. Firedman
Woods Rogers PLC
Wachovia Tower, Suite 1400
10 South Jefferson Street
Roanoke, Virginia 24038-4125

Counsel for Amicus Curiae
The Virginia Association of Defense Attorneys

Dawn E. Boyce
Trichilo, Bancroft, McGavin,
Horvath & Judkins, P.C.
3920 University Drive
Fairfax, Virginia 22030

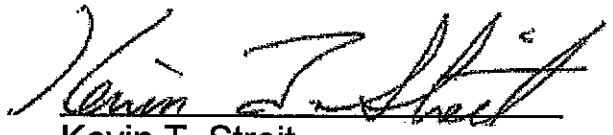
Counsel for Appellee

J. Michael Roberts
Shook, Hardy & Bacon, LLP
2555 Grand Boulevard
Kansas City, MO 64108

Pro Hac Vice
Counsel for Appellee

A digital copy (via CD) of this Reply Brief was also hand-filed with the Clerk's Office of the Supreme Court of Virginia this same date.

Date: October 19, 2010



Kevin T. Streit