Center for Law and Public Policy

News Release

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DRI Files Amicus Brief in *Walker v. Tensor Machinery*

Georgia Case Involves Double Recovery Issues in Workplace Accident

CHICAGO – (July 13, 2015)— DRI – The Voice of the Defense Bar has filed an amicus brief in the Supreme Court for the State of Georgia in the case of *Walker v. Tensor Machinery*. The brief was written by DRI's Center for Law and Public Policy.

In the case, Plaintiff was a plant worker at non-party OFS Fitel in Georgia and was operating a machine when he placed his foot into an open and obvious pinch point, thereby sustaining a crush injury to his foot.

The machine at issue was designed, made and sold by the defendant Tensor entities to non-party Lucent for use in Brazil, in or around year 2000. Around year 2005, the machine was acquired by non-party OFS Fitel in Georgia. Plaintiff had been working on the machine for about eight months when the accident occurred. In his deposition, Plaintiff contends that in his training that he was not warned or instructed about the pinch point at issue or that he was at risk for injury.

After the accident, Plaintiff's employer OFS Fitel installed a safety guard over the pinch point and placed warning stickers in the area to warn users of the pinch point.

Plaintiff recovered workers' compensation benefits from his employer OFS Fitel, resulting in a lump sum settlement in year 2011.

Plaintiff filed his injury case against the Tensor defendants after the relevant statute of limitations had expired for strict liability products claims (manufacture, design). As such, the federal judge ruled that the only remaining claim for trial is negligent failure to warn.

At the pretrial conference earlier this year, the judge informed the parties that the law in Georgia was unclear as to whether a jury could apportion fault in a personal injury case against the non-party employer of a plaintiff because of the immunity granted to the employer under the Georgia workers compensation law. Although the defense argued that the Georgia apportionment statute allows for this apportionment, the judge determined otherwise and sent the question to the Georgia Supreme Court.

The question is one of fairness: Should a defendant have to bear 100 percent of liability for an injury in which a non-party employer bears some responsibility for negligence in failing to warn about a product danger, because the non-party employer has immunity under Georgia law? DRI's brief argues the broad

policy considerations of fairness in that a business tortfeasor should only pay its fair share of any liability to an injured victim who already has collected some compensation for an injury from a responsible tortfeasor. In other words, why should a defendant company or business have to pay for the actions/omissions of another tortfeasor?

Brief author Matthew T. Nelson of Warner Norcross & Judd of Grand Rapids, MI is available for interview or expert comment through DRI's Communications Office.

For the full text of the amicus brief, click here.

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