



THE BASSETT FIRM
WWW.THEBASSETTFIRM.COM

Passion. Preparation. Persistence.

Volume 2, Issue 9

THE BASSETT BULLETIN™

EMPLOYERS ARE NOT INSURERS OF THEIR EMPLOYEES

In a recent Texas Supreme Court case, *The Kroger Co. vs. Billie Elwood*, the Court reversed the Court of Appeals' decision regarding whether an employer would be the insurer of its employees. This is a case where Kroger, a non-subscriber to Workers' Compensation, was sued by its employee, Billie Elwood, over injuries he sustained while in the course and scope of his employment. The Texas Supreme Court stated that although an employer must provide its employees a safe work place environment, an employer is not an insurer of its employees' safety. It owes no duty to warn of hazards that are commonly known, or already appreciated by the employee.

FACTS OF THE CASE

Billie Elwood, a courtesy clerk at a Kroger Grocery Store, was injured when a customer shut her vehicle door on his hand while he was transferring items from a grocery cart to the vehicle. Elwood had placed one hand in the vehicle's doorjamb, and one foot on the cart, to keep the cart from rolling down a slope on Kroger's parking lot.

In the trial court, a jury found Kroger liable for Elwood's injuries; the Court of Appeals affirmed the judgment. However, the Texas Supreme Court said that Kroger had no duty to warn Elwood not to place his hand in a doorjamb, and there was no evidence that additional equipment or assistance were needed to perform Elwood's job safely. As such, the Supreme Court reversed and rendered judgment for Kroger.

Kroger is a non-subscriber to Workers' Compensation; therefore, to recover damages, Elwood had to establish that Kroger's negligence proximately caused his injuries. Elwood argued that Kroger provided inadequate training on how to maneuver carts on a sloped parking lot, never advised that he should take a second clerk with him to the sloped portion of the lot, and provided no explanation on how to avoid injury when loading groceries into customers' vehicles.

Elwood also alleged that, even though Kroger was aware that customers' vehicles were often damaged from rolling carts in the sloped parking area, it never provided carts with locking wheels or wheel blocks.

The jury found that Kroger was liable and determined that Elwood was 40% negligent. Because non-subscribers are not entitled to a contributory negligence instruction, the Court of Appeals reformed the judgment and awarded Elwood 100% of the damages. Kroger petitioned for review, arguing that there was no evidence to support the jury's verdict. The Supreme Court then heard the case.

THE TEXAS SUPREME COURT'S DECISION

The Supreme Court stated that whether a duty exists is a threshold question of law; liability cannot be imposed if no duty exists. They went on to state that an employer has a duty to use ordinary care in providing a safe workplace, but the employer is not an insurer of the employees' safety. It owes no duty to warn of hazards that are commonly known or already appreciated by the employee. Furthermore, the employer has no duty to provide equipment or assistance that is unnecessary to the job's safe performance. The Supreme Court stated that when an employee's injury results from performing the safe character of work that employees in that position have always done, an employer is not liable if there is no evidence that the work is unusually dangerous.

In this particular case, the Texas Supreme Court stated that unloading groceries into the trunk of a car, and on a sloped parking lot, is a regularly performed task. The Court stated that such a task is not an unusually dangerous job, nor was there evidence that other courtesy clerks sustained similar injuries while loading groceries on the sloped lot. The Texas Supreme Court stated that Elwood presented no evidence that his job required specialized training.

WHAT DOES THIS MEAN?

According to this case, an employer is not automatically liable when an employee gets injured on the job, if the risk of injury was obvious to the employee. Elwood's injuries seemed to occur because of a lack of common sense on the part of the employee. The Texas Supreme Court did not find that such an injury was a result of an unusually dangerous job, nor a job which required specialized training.

Although non-subscribers are liable to their employees and must use ordinary care in providing a safe workplace, that duty does not extend to hazards that are commonly known or already appreciated by the employee. The damage sustained to Elwood was a risk that the employee should have been aware of. As a result, the Texas Supreme Court did not hold the employer liable for such an injury.

The ruling in this case obviously favors the employer. The Court seems to state that just because an employee gets injured on the job, doesn't mean the non-subscriber employer is automatically liable.

The Bassett Firm

*Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1600
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769*

www.thebassettfirm.com

ATTORNEYS

- **MIKE H. BASSETT**
- **STACI Q. CASSIDY**
- **JENNIFER R. ELDRIDGE**
- **MICHAEL J. NOORDSY**
- **MATHEW SAMUEL**



Information regarding *The Bassett Bulletin*™ is available from **Diane Dalling** (ddalling@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

The Bassett Bulletin™ is published twenty-six times a year, and is a complimentary publication of The Bassett Firm.
