Silica Team Won Summary Judgment in Hinds County on Behalf of Precision Packaging

On August 1, 2018, Judge Joseph Sclafani entered an Order granting Precision Packaging's motion for summary judgment in the Robert Tucker case pending in Hinds County, Mississippi. Plaintiff had two claims against Precision: (1) a failure to warn claim; and (2) a "sand is defectively designed and unreasonably dangerous" claim. Plaintiff conceded Precision's summary judgment motion on plaintiff's failure to warn claim because plaintiff admitted in his deposition that he did not read Precision's warning. However, plaintiff vigorously pursued his defective design claim.

To support plaintiff's defective design claim against Precision, plaintiff argued that:

- the silica containing sand was designed and processed;
- the sand is defective and unreasonably dangerous;
- the sand did not function as expected; and
- alternative designs (walnut shells, steel shots, water) were available and widely accepted in the industry.

FWK argued on behalf of Precision that plaintiff's defective design claim fails as a matter of law because:

- Precision's sand was not "designed" because it is a naturally occurring raw material, and nothing in the mining, grading, or packing process changes the chemical composition or properties of the sand;
- Precision's sand has always been a legal product that can be used safely in sandblasting, as confirmed by the testimony of Tucker's industrial hygienist expert Vernon Rose; and
- Plaintiff failed to offer evidence of a feasible design alternative for sand because walnut shells, steel shot, and water are not alternative designs for sand. Those alternatives are just different products.

The Court agreed with our argument that since Precision's sand is not "designed," it cannot be defectively designed. The Court stated:

The Court is of the view that "designed" within the meaning of the MPLA (Mississippi Products Liability Act) requires the manufacturer, designer or seller to alter (or change) a characteristic, a property or the composition of a natural element or substance in order to fall within the ambit of the statute. A natural element or substance that has not been

physically, mechanically, chemically or otherwise altered by a manufacturer, designer or seller prior to sale has not been "designed" within the meaning of the MPLA. Consistent with the common, ordinary meaning of "design," a natural element or substance that has not been altered or changed by a manufacturer, designer or seller has not been "created," "fashioned," "executed" or "constructed" according to any plan of the manufacturer. Rather, it has been "created," "fashioned," "executed" or "constructed" by the hand of God.

* * *

While the Court agrees with Tucker that [Precision] follows a process in removing silica containing sand from the earth and ultimately packaging it for sale under a tradename for a specific purpose, this process does not alter or change a characteristic, a property or the composition of the sand. Specifically, the sand at issue is not physically, mechanically, chemically, or otherwise altered by [Precision] prior to sale. Accordingly. the Court holds that Tucker cannot establish, as a matter of law, that the silica containing sand at issue has been "designed" by [Precision] within the meaning of the MPLA. Thus, Tucker's design defect claims should be dismissed.

The Court also agreed with our argument that Precision's sand is not defective and unreasonably dangerous, and stated:

Tucker's design defect claims fail as a matter of law because Plaintiff has failed to offer any evidence to establish that [Precision's] sand was sold in a "defective condition" rendering it "unreasonably dangerous." As Precision persuasively argues, and Tucker has not disputed: "There has been no law or regulation prohibiting the sale of sand for sandblasting in the United States. It has always been legal to sell sand for sandblasting. Because of its availability and low cost, sand has always been the most widely used abrasive blasting agent in the United States." Further, as Precision argues. Plaintiff's own industrial hygienist Vernon Rose has testified that silica containing sand may be used safely as an abrasive in sandblasting . . ..

With respect to our argument that plaintiff failed to offer evidence of the existence of a feasible design alternative for sand, the Court said "it is unnecessary for the Court to address the conflicting authority on the statutory requirement of 'feasible alternative design.'"

Fred Krutz, Brian Hannula, and Andrew Stubbs represented Precision Packaging in this case.