

The Negligence Report

A Monthly Publication Dedicated to Detailing Recent Cases Pertaining to Civil Liability Issues.

July, 2006

NOTEWORTHY RECENT PREMISES LIABILITY CASES INVOLVING INSECTS.

The inaugural issue will focus on two recent Texas cases which address a landowner's duty to warn of a dangerous condition; namely, insects.

The Texas Supreme Court issued an opinion on June 9, 2006 which addresses a landowner's duty to educate an individual about the dangers of bees. In Wilhelm v. Flores, 49 Tex. Sup. Ct. J. 709 (Tex. 2006), Curtis Wilhelm, a novice beekeeper sold bee hives located on his land to John Black, a professional beekeeper. Mr. Black arrived with Santos Flores and another individual to remove the bee hives. Mr. Black provided protective equipment to Santos Flores. Once the bee hives were loaded, Mr. Flores disappeared for several minutes. He returned complaining of being stung by a bee. He died a short time later of an allergic reaction to the bee sting. Santos Flores' widow, Dora Elia Flores, brought suit in Hidalgo County District Court against John Black and Curtis Wilhelm alleging among other theories of recovery that Curtis Wilhelm should have warned Santos Flores of the dangers associated with bees. The jury found both Black and Wilhelm jointly and severally liable and awarded almost \$1.6 million in damages. Wilhelm appealed to the Corpus Christi Court of Appeals and they found that he had a duty to warn Santo Flores of the dangers associated with bees. The Texas Supreme Court overturned the verdict against Curtis Wilhelm. The Court began its analysis by stating that if John Black had been Curtis Wilhelm's independent contractor that Curtis Wilhelm would not have owed a duty to warn his employees of the dangers associated with bees since that danger is obvious. After finding that Curtis Wilhelm would not have owed a duty to John Black's employees in the independent contractor scenario, the Court concluded that Curtis Wilhelm did not owe his purchaser's (John Black) employees a duty to warn of obvious dangers either, including the danger of an allergic reaction to a bee sting. The Court did state that John Black as employer of Santos Flores would have owed a duty to warn him of the danger of an allergic reaction to a bee sting.

The 9th District Court of Appeals in Beaumont, Texas was asked to decide a landowner's duty to warn a horse purchaser of the presence of fire ants. Gamble v. Peyton, 182 S.W.3d 1 (Tex. App. – Beaumont, 2005). Rhonda Gamble was dismounting from the two and half year old quarter horse when the horse began to buck and threw her to the ground. Ms. Gamble sustained injuries leading to a back surgery. Ms. Gamble was on Larry Peyton's premises to test ride a horse. Prior to riding the horse in Larry Peyton's pen, Mr. Peyton remarked that the fire ants on his ranch were more of a problem than in years past. After Ms. Gamble fell, the horse trainer noticed that the quarter horse had ants on the back of its legs. The court found that the owner of a premises does not have a duty to protect invitees against wild animals or wild plants that are a natural element of the land. A land owner would have a duty to warn invitees of animals that they introduced which were not indigenous. Here, the court found that fire ants are a natural part of an individual's land in East Texas. The court dismissed the Plaintiff's argument that Larry Peyton owed a higher duty with regard to the horse pen, since its purpose was to provide a safe place to ride a horse.

Comment: These two cases stand for the proposition that a landowner is not responsible for the ill effects of nature even if the natural danger at issue could be controlled or eliminated (fire ant insecticide). A landowner becomes responsible when he introduced the natural condition (such as an exotic petting zoo) and fails to limit or eliminate the danger or warn of the danger.

Fenley & Bate, L.L.P.

ATTORNEYS AT LAW

224 E. Lufkin Avenue ■ P.O. Box 450 ■ Lufkin, Texas 75902-0450
TELEPHONE (936) 634-3346
TELEFAX (936) 639-5874

415 N. Washington, Ste B, Livingston, Texas 77351
TELEPHONE (936) 327-1100
TELEFAX (936) 327-1107

EMAIL OFFICE@FENLEY-BATE.COM