

Supreme Court of Texas
February 12, 2015

Nabors Well Services, LTD v. Asuncion Romero

No. 13-0136

Case Summary written by McKenzie Jordan, Staff Member.

Justice Brown delivered the opinion of the court.

Petitioner Nabors Well Services, LTD (Nabors) appealed the court of appeals' affirmation of the trial court's judgment finding Nabors 51% and Respondent Soto 49% responsible for a car accident, which gave rise to this suit. A Nabors transport truck and respondent's Chevrolet Suburban collided when the Nabors truck clipped the suburban while turning into a Nabors facility. The Suburban pulled into the opposing traffic lane to pass the truck, but when it was clipped, the Suburban traveled off the highway and rolled multiple times. The adult passenger was killed and the seven other occupants were injured. There is conflicting evidence as to which occupants were wearing a seat belt and which were ejected.

Nabors sought to offer expert testimony that the suburban passengers' failure to use seat belts caused their injuries and fatality. The trial court followed the precedent of *Carnation Co. v. Wong*, excluding all evidence of seat-belt nonuse. The jury awarded the Soto and Romero families just over \$2.3 million. The court of appeals affirmed based on the *Carnation* prohibition of seat-belt evidence. The Court granted review to consider the current viability of *Carnation* in light of the legislature's repeal of its statutory ban on seat-belt evidence.

The Court discussed early Texas cases on the admissibility of seat-belt evidence, which discussed that there was no statute requiring seat-belt use and that there was non common law duty to use a seat belt. These cases culminated in the Court's decision in *Carnation* to severely limit admissibility of seat-belt evidence. In that case the Court held that "persons whose negligence did not contribute to an automobile accident should not have the damages awarded to them reduced or mitigated because of their failure to wear available seat belts."

The Court went on to discuss the evolution of seat-belt laws. When the accident at issue occurred, Texas law required a driver to restrain most children riding anywhere in the vehicle. A prohibition against seat-belt evidence in civil trials remained until the legislature repealed the provision in 2003. Although the statute was repealed, the *Carnation* holding was brought back to life. The court addressed the question of whether this holding is still relevant and should stand today.

At the time *Carnation* was decided Texas followed an all-or-nothing system of contributory negligence. However, in 1995, the legislature replaced comparative negligence with proportionate responsibility. Under this

approach, the fact-finder apportions responsibility according to the relative fault of the actors after considering each person's role in causing, *in any way*, harm for which recovery is sought. Therefore, the Court was faced with the question of whether or not "a plaintiff's failure to use a seat belt, though it did not cause the car accident, [can] limit his recovery if it can be shown that the failure to use a seat belt caused or contributed to cause [the] injuries[.]" The Court later held that precedent that a plaintiff's injury-causing negligence cannot reduce a plaintiff's recovery contradicts today's proportionate responsibility statute. Because the legislature deemed that a plaintiff is accountable for causing or contributing to the harm *in any way*, there are no restrictions on the assignment of responsibility to the plaintiff. The Court noted that most people would say that a plaintiff who breaks the law by not using a seat belt is at least partially responsible for the harm—even if he did not cause the accident. This failure to use a seat belt is one way the plaintiff could cause or contribute *in any way* to his own injuries. Therefore, the Court overruled *Carnation* (and its even earlier decision *Kerby*) because its "once-prudent measures [] have outlived their usefulness."

The Court was sure to clarify that seat-belt evidence is only admissible if it is relevant and that all other evidence rules must be followed with its introduction. The Court also made a distinction that a plaintiff's *post-occurrence* failure to mitigate his damages is not considered in the responsibility apportionment, only the *pre-occurrence* injury-causing conduct. The Court believed that its decision is not only correct statutory interpretation, but also sound public policy. After much discussion, the court held that "relevant evidence of use or nonuse of seat belts, and relevant evidence of a plaintiff's pre-occurrence, injury-causing conduct generally, is admissible for the purpose of apportioning responsibility under our proportionate responsibility statute, provided that the plaintiff's conduct caused or was a cause of his damages." The current case was remanded to the court of appeals for proceedings consistent with this opinion.

In Re Deepwater Horizon, Relator

No. 13-0670

Case Summary written by Matt A. Kelley, Staff Member.

Guzman, J., delivered the opinion of the Court.

Before the Court on certified questions from the Fifth Circuit, this case concerned an insurance-coverage dispute between Transocean and BP arising out of damages caused by the April 2010 explosion of the *Deepwater Horizon* oilrig and the subsequent discharge of oil into the Gulf of Mexico. BP sought to qualify for coverage as an additional-insured under primary and excess insurance policies possessed by Transocean as the drilling-rig owner. Whether BP qualified for extended coverage for liabilities related to

subsurface pollution turned on to what extent the drilling contract between the parties limited the liability of Transocean under the insurance policies. Construing the contract as a whole, the Court determined that the drilling contract had plain language linking BP's status as an additional-insured to the indemnity obligations of Transocean. Thus, the drilling contract was incorporated by reference into the insurance policy and the Court held that language in the insurance policy obligated Transocean to name BP as an additional-insured only for "liabilities assumed by [Transocean] under the terms of [the Drilling] Contract." The drilling contract did not oblige Transocean to name BP as an additional-insured for liabilities incurred as a result of subsurface pollution and therefore BP lacked insured status for such liability under the policy. The Court concluded by noting that Texas law has a long tradition allowing insurance policies to incorporate other documents by reference, and the referenced documents can function to limit, expand, or further clarify the scope of insurance coverage under the policy.

Johnson, J., dissenting.

Though he agreed with the principles of Texas contract law the majority used to construe the insurance policies at issue, Justice Johnson dissented with respect to the application of those principles. He did not consider the language in the drilling contract incorporated into the insurance policy because it lacked "an explicit reference" thereto, and was therefore inadequate to be incorporated by reference under Texas law. Further, he determined that according to other provisions within the insurance policy, BP qualified as an "insured" rather than only an "additional-insured," and thus BP qualified for extended coverage as a result. Because BP qualified as an "insured," any language limiting Transocean's obligation to name BP as an "additional-insured" was inapposite because BP qualified for full coverage as an "insured" under the policy.