

[Products Liability Law Daily Wrap Up, WARNINGS ISSUES—INDUSTRIAL AND COMMERCIAL EQUIPMENT—Tex. App.: Evidence supported jury finding of liability against HVAC designers, \(Oct. 19, 2018\)](#)

Products Liability Law Daily Wrap Up

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By Leah S. Poniatowski, J.D.

The designers of a commercial air conditioning compressor could not reverse a products liability jury verdict in light of the sufficient evidence supporting the failure-to-warn and design defect claims brought by an HVAC technician who was severely burned when the compressor exploded, a state appellate court in Texas ruled, affirming the lower court. The appellate court also held that the award for mental anguish damages was appropriate in light of the life-altering injuries and were not duplicative of the disfigurement damages award (*Emerson Electric Co. v. Johnson*, October 18, 2018, Pittman, M.).

In 2012, an experienced HVAC technician installed an air conditioning compressor designed and sold by Emerson Climate Technologies, Inc., which contained a terminal designed and manufactured by Emerson Electric Co., d/b/a Fusite (Fusite), at a food store. The system was not working as expected, requiring the technician and his assistants to return to the store to check on the compressor. They observed that the fuses in the disconnect box attached to the HVAC unit were blown, which was not uncommon to the unit, but once it was turned back on, the technician heard an unusual noise. The technician believed the Emerson compressor was the source and he removed the cover over the terminal, which connected the power source to the compressor. When the cover was removed, a terminal vent occurred. After several terminal pins shot out of the compressor, scalding hot refrigerant and oil jetted out, igniting and covering the technician. He was seriously injured from second- and third-degree burns, which covered over 60 percent of his body.

Trial court. The technician filed a negligence-based and strict products liability lawsuit against Emerson and Fusite. The insurer of the store intervened. Fusite and Emerson attempted to block the testimony of the technician's expert witness before trial, but were unsuccessful. They were also unable to persuade the court to sustain their objections to several questions in the jury charge when the remaining issues went to trial. The jury favored the technician on all of his design defect and failure-to-warn claims, although the jury determined that the technician's contribution to his injuries was 10 percent. The jury award was substantial—almost \$15 million—for physical pain, mental anguish, loss of earning capacity, disfigurement, physical impairment, and health care expenses. Fusite and Emerson filed the present appeal, challenging the sufficiency of the evidence supporting the liability determinations and mental anguish damages.

Failure to warn. The appellate court explained the standard for marketing defect (failure-to-warn) claims, stating that a manufacturer does not have a duty to warn if the danger would be obvious to the ordinary user or those dangers are common knowledge in the community. Fusite and Emerson contend that they had no duty to warn the technician because he is an HVAC professional who had knowledge of the risk of terminal venting. The technician countered that the noise was not specific and that in a service handbook of a competitor's compressor, there was a warning describing the sounds that the technician and his assistant would hear that would indicate the risk of terminal venting and that the user should move away immediately. The testimony evidence presented by Emerson representatives and a technical expert supported the technician's position that the noises heard were not commonly known to be indicative of an imminent terminal vent. Accordingly, the danger was not obvious, commonly known, or actually known.

Further, Fusite and Emerson could not negate causation vis-à-vis the technician's experience because the evidence, i.e., the technician's testimony, established that he would have reacted differently if he knew what the sounds indicated. Additionally, Fusite and Emerson failed to rebut the presumption of causation when they

were required to do so. Therefore, the jury's finding on the failure-to-warn liability claim was supported by the evidence. Similarly, the appellate court agreed that the jury instruction on the failure-to-warn claim was not erroneous.

Design defect. The appellate court held that there was sufficient evidence to support the jury's finding that Fusite was liable for strict products liability design defect in its 600-series compressor. According to Texas law, an injured party must present by a preponderance of the evidence that there was a safer design alternative and the defect caused the injury in order to succeed on a design defect claim. The technician proffered evidence that Fusite's 700-series compressor was a safer alternative design, which was supported by testimony of his technical expert. Fusite tested both the 600 and 700 series, and some of those tests revealed that the likelihood of a terminal vent incident was far less likely in the 700 series, and an internal memo stated that the 700 series' performance was better than the 600 series. The appellate court observed that Fusite's testing data did not contradict the technician's expert's opinion, nor should the expert's testimony have been excluded.

Further, the patent for the terminal design largely utilized in the 700 series compressors, which Emerson acquired, explained that the groove on the outside of the compressor shell helps prevent terminal venting, and Fusite had presented to customers that the external groove was a "product enhancement." Moreover, the defendants' challenge that the question presented to the jury on the design defect issue was erroneous was wholly unsupported. The appellate court stated that the specific jury instruction given at trial was the question approved by the Supreme Court of Texas, which had "made itself abundantly clear on this issue" as it had been addressed by the state high court on several occasions and remained unchanged.

Mental anguish award. The appellate court determined that the evidence at trial supported the \$5 million damages award for mental anguish. Based on the testimonies presented at trial, after the incident, the technician's personality significantly changed. He was described as being friendly, calm, always ready to help others, but immediately after the incident he refused treatment and did not want to live. He began treatment for his injuries, but remains largely withdrawn from social interaction, not having returned to the church where he was an elder, and struggles with the realities that he cannot work or completely take care of himself independently. The appellate court stated that the award for past mental anguish damages was fair and reasonable, and the court declined to consider the proportionality of the awards.

The appellate court also held that the technician's mental anguish as impacted by his disfigurement is not a "double recovery." The jury charge lacked definitions for "disfigurement," "physical impairment," and "mental anguish," but instructed the jury to "consider each element separately" and not award any money "if you have otherwise, under some other element, awarded a sum of money for the same loss." The appellate court was required to presume the jury followed the instructions.

With respect to the future mental anguish award, the appellate court clarified that the medical records not reflecting that the technician was depressed or otherwise suffering emotionally were taken by providers whose task was not to treat his mental state. The checkmarks in the questionnaires asking about changes to his mental state were conclusory and it was not clear if the technician even completed them himself. The appellate court acknowledged that the "amount awarded was large, but so was the effect of the explosion on [the technician's] life and the resulting effect on his mental state, as established by the evidence," and that the amount did not deviate from those in cases in which an individual's life was altered so dramatically. Therefore, the ruling from the lower court was affirmed.

The case is No. [02-16-00173-CV](#).

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Companies: Emerson Electric Co. d/b/a Fusite; Emerson Climate Technologies, Inc.; United States Liability Insurance

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