Two more examples as evidence that we are living in an age of zero personal responsibility, and Corporate America is branded the **"**Bad Guy**"** and forced to pay the bill. (Personal opinion)

Historic $7.8 million jury award in death of Minnesotan struck by driver who was high from huffing aerosol

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Source: **Star Tribune (Minneapolis, MN)**

A federal jury in Minnesota has found that the maker of a dust remover must pay $7.8 million in connection with a driver inhaling the aerosol to get high and causing a two-vehicle crash in far northern Minnesota that killed another motorist.

The verdict in U.S. District Court in Minneapolis on April 26 found CRC Industries liable for the death of 42-year-old Cynthia McDougall in a head-on wreck just outside of her hometown of Baudette in July 2019 with a pickup truck driver who was under the influence of huffing the aerosol.

McDougall's husband, David McDougall, filed a lawsuit in July 2020. Jurors found the company liable on two counts: that the CRC Industries' computer dust remover Duster was "in a defective condition [and] unreasonably dangerous to users of or those exposed to the product," and that the design caused Cynthia McDougall's death.

"To our knowledge," said Phil Sieff, an attorney representing David McDougall, "it's the first verdict [in the United States] against an aerosol dust remover manufacturer for the harms resulting from someone misusing the product."

The suit alleged, among other things, that CRC provided "inadequate warnings to the user of the product about the potential for harm that the user and innocent bystanders may experience as a result of inhaling CRC Duster."

A second phase of the trial addressed whether to require CRC to pay punitive damages on top of the $7.75 million award. Jurors declined to do so, but attached a note to its verdict sheet that read in part:

"We expect CRC to use this as an opportunity to be a leader in their industry and spearhead an effort to address inhalant abuse. ... Testimony and evidence shows that there is much more that could be done to combat the misuse of aerosol products, ESPECIALLY, Duster."

Virginia McCalmont, an attorney for the manufacturer, said Thursday that "CRC does intend to appeal."

Additionally, a company spokesperson said, “We deeply empathize with the pain and loss the McDougall family is experiencing. While we understand their desire for accountability in this tragic situation, we vehemently disagree with the jury’s verdict. It is unjust to hold a manufacturer accountable for one individual’s deliberate and unlawful misuse of its products when reasonable and responsible precautions have been taken.”

The statement from the suburban Pittsburgh-based company added that “we clearly label our products with instructions for safe use and include explicit warnings on the dangers of deliberately inhaling them. We also have taken a proactive role in working with our industry and the Consumer Product Safety Commission (CPSC) to address the societal problem of deliberate inhalation of aerosol dusters.”

At the scene of the crash, deputies with the Lake of the Woods Sheriff’s Office seized an aerosol can of Duster and receipts for multiple cans of the product from the pickup truck of Kyle A. Neumiller when he crossed the center line and hit McDougall’s SUV, the charges against him read. Neumiller, of Isle, Minn., 23 at the time of the crash, was convicted of criminal vehicular homicide and received a six-year sentence.

David McDougall said Thursday he attended every day of the trial, which started on April 15 in a courtroom about 330 miles from his home. “The verdict gave me a sense of peace I hadn’t felt in quite a long time,” he said.

David McDougall said he and his son, 15-year-old Jonah, still live in the same home about 10 miles north of Baudette, where Cynthia worked for the Lake of the Woods School District and did hair at a beauty shop on the side.

“I have to drive over the spot it happened, both of us, do every day on the way into town,” where David McDougall works as a propane technician and Jonah attends high school.

“It’s one of those things, you do it enough, they say time heals all wounds,” David McDougall said. “I don’t know about that. We’re just strong for each other, Jonah and I.”

The jury assigned 77.5% of the blame for Cynthia McDougall’s death to Neumiller, who was not named as a defendant in the suit, and the balance to CRC. David McDougall sued Neumiller separately in Lake of the Woods County District Court, and they reached an out-of-court settlement for an undisclosed sum.

“Cynthia McDougall’s tragic death would have been avoided altogether,” the wrongful death suit read, “if CRC Industries had not defectively designed, defectively manufactured, distributed, and sold CRC Duster, knowing it was reasonably foreseeable that someone would inhale CRC Duster to get high while driving and strike and harm and kill innocent bystanders like Cynthia McDougall.”

The chemical in Duster and similar products that produces the addictive high is called DFE. When inhaled, it acts as a depressant, and can cause a host of debilitating

symptoms. They include paralysis, loss of consciousness and even death, according to several studies.

Last August, the CPSC called huffing an “unfolding tragedy” and estimated the pursuit of the cheap high from various easily accessible aerosols costs American society more than $1 billion per year.

The agency said that between 2006 and 2022 in the United States, it has been notified of 1,115 deaths and 28,800 emergency room visits involving inhalation of aerosol dusters.

Thursday, April 25, 2024

Worker Gets Benefits for Crash Despite Leaving Job Site Without Employer's Approval

- *State: California*

A California appellate court upheld an award of benefits to a worker for his injuries from a car accident that happened after he left a fire camp without his employer’s knowledge and in violation of its rules, and used marijuana.

Braden Nanez worked for 3 Stonedeggs Inc., a mobile food service that contracts with the U.S. Forest Service to provide meals for firefighters and supporting personnel.

Nanez began working for the company in September 2020 at the age of 19. He was stationed at a fire camp in Brownsville and elected to stay on-site to get as many work hours as possible.

One day, Nanez told a camp manager that he was going to leave after breakfast to go to his home in Chico to do laundry. He said he would return the following afternoon, but instead, he returned around 4:30 in the morning. The camp manager had a talk with Nanez about this being unsafe, as the roads into the camp were dark and windy and he was concerned about Nanez driving while tired.

Toward the end of September 2020, Nanez volunteered to move to another fire camp near Yreka. The camp manager asked Nanez to get some sleep before driving home to Chico and then on to the new camp.

At the new camp, all employees were expected to stay on-site. They were instructed not to leave if they didn’t have to, as the roads were very remote, there was no cell service, and fire activity and equipment were moving about. The employer instructed workers that if they needed to leave camp for a personal reason, the employer would give them the shift before their departure. This allowed the employee to get extra sleep before traveling. Employees were not supposed to leave the camp without approval from a supervisor.

On Oct. 5, 2020, six days after arriving, Nanez woke for his shift at 4:45 a.m. He left the camp after his shift at 8:45 a.m. without telling a supervisor.

That afternoon, at approximately 2:10 p.m., Nanez was driving north on State Route 263 north of Yreka when his car went into the southbound lane and collided head-on with a van. He suffered a broken leg and a head injury, which left him comatose.

The Highway Patrol officers who responded to the accident reported smelling the odor of burnt marijuana while inspecting Nanez's car. That evening at the hospital, Nanez's urine tested positive for THC.

Nanez filed a claim for workers' compensation benefits, which 3 Stonedeggs contested.

An administrative law judge denied the claim, finding that Nanez had materially deviated from the course and scope of his employment by leaving the camp in violation of the employer's policy, without its knowledge or approval, and for no known purpose.

The Workers' Compensation Appeals Board reversed, citing the "commercial traveler" rule. Under this rule, an employee traveling on the employer's business is regarded as acting within the course of employment during the entire period of travel, so workers' compensation coverage applies to injuries the employee sustains during the travel itself and in the course of other personal activities "reasonably necessary for the sustenance, comfort and safety of the employee," such as getting food and shelter.

The WCAB determined that the rule was applicable because 3 Stonedeggs allowed Nanez to travel to the camp with his own car and did not instruct him not to use it during his off hours or for personal reasons. The WCAB also posited that Nanez's conduct in using his car during his off hours to drive from the camp should have been reasonably expected, given the employer's requirement that he spend a significant period away from home.

The employer petitioned the Court of Appeal for review.

The Court of Appeal for the 3rd District of California said the WCAB had jurisdiction over Nanez's appeal from the ALJ's denial. The court noted that Nanez's counsel and counsel's paralegal both attested that there had been a delay in their receipt of the ALJ decision, and the WCAB found that the appeal was filed within 20 days of when the decision was delivered.

"We are bound by the board's factual finding," the court said.

The court also found that substantial evidence supported the board's determination that Nanez was a commercial traveler at the time of the accident.

The court said it could find no reported case law or other board decisions that explain how to determine whether the employee is a commercial traveler, so it decided to begin from the idea that the rule is an exception to the going-and-coming rule.

The going-and-coming rule precludes compensation where the injury occurs during the employee's ordinary, daily, local commute to and from his fixed place of employment at fixed hours and in the absence of special or extraordinary circumstances.

The court said Nanez's travel was not the type subject to the going-and-coming rule, as his travel to the camp was not an ordinary, daily, local commute to a fixed place of employment. His employment also required that he reside at the camp for a limited duration, but it was not a domicile from where he would daily commute to work, either, the court said. The camp was not a permanent or fixed base of operations, the court reasoned, as it was shut down after approximately one month.

Given this evidence, the court said Nanez was engaged in commercial travel by being away from home. The court also found that his accident was incidental to his employment away from home.

“No witness had actual knowledge of why Nanez left camp,” the court said, and he has no memory of the accident. However, the court said, the employer could reasonably expect that Nanez, incidental to the employer’s requirement that he spend time away from home, would leave camp in his personal automobile and drive to the nearest town during his off hours.

While the employer made clear to employees its “expectation” that they not leave camp, the court said, it did not prohibit it.

The employer also attempted to ensure that the employees had no reason to leave camp to acquire items they needed or wanted, the court said, but it expected that they could leave by trying to limit the number of trips and implementing the policy that any employee needing to leave must inform a supervisor.

The court acknowledged that Nanez did not obtain authorization to leave the camp in violation of the employer’s policy. However, “Even intentional or criminal misconduct that occurs within the course of one’s employment and causes injury does not necessarily preclude recovering benefits.”

Given Nanez’s age, his having his vehicle with him, the structure of his shifts, the remoteness of the camp and his not being prohibited from using his vehicle during his off hours, his departure is “not so unusual or startling that it would seem unfair to include the loss resulting from Nanez’s injury among the other costs of the employer’s business,” the court said.

The court went on to say that even if a reasonable inference can be made that Nanez left camp to smoke marijuana, it could not annul a board decision just because it chose between one of two competing inferences reasonably drawn from the evidence.

To read the court’s decision in 3 Stonedeggs Inc. v. WCAB, No. C098711, 04/23/24, unpublished,