

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Federal Insurance Company v. United States

538 F.2d 300 (10th Cir. 1976) · No. No. 75-1519 · Decided July 20, 1976

SUMMARY

The Tenth Circuit affirmed a judgment against the United States under the Federal Tort Claims Act for fire damage at Tinker Air Force Base. The court held that *res ipsa loquitur* applied because the electroplating unit causing the fire was sufficiently identified, the tank supplied by the insured was not shown to be defective, and the Government had exclusive control of the remaining instrumentality. The court also upheld the trial court’s finding that the Government did not rebut the inference of negligence.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	HILL, Circuit Judge; SETH, Circuit Judge; DOYLE, Circuit Judge
JURISDICTION	Federal
DECIDED	July 20, 1976
DOCKET	No. 75-1519
DISPOSITION	affirmed
PROCEDURAL POSTURE	The United States appealed from a judgment entered against it in an action brought under the Federal Tort Claims Act. The district court relied on <i>res ipsa loquitur</i> to find that Government negligence caused a fire that damaged property insured by the appellees.
STANDARD OF REVIEW	The court reviewed the district court's factual findings, including its evaluation of evidence concerning the allegedly defective tank and the rebuttal of the <i>res ipsa</i> inference, under the clearly erroneous standard.
PRECEDENTIAL VALUE	Published federal appellate decision; precedential within the Tenth Circuit subject to subsequent treatment.
PARTIES	United States of America v. Federal Insurance Company, other insurance companies

TOPICS

- negligence
- insurance
- subrogation
- evidence
- civil procedure

PRACTICE AREAS

Torts

Federal Tort Claims Act

Insurance subrogation

Evidence

QUESTIONS PRESENTED

1. Whether the evidence sufficiently identified the instrumentality that caused the fire for purposes of applying *res ipsa loquitur*, even though the precise manner in which the liquid escaped from the tank was uncertain.
2. Whether the component instrumentalities of the electroplating unit were within the Government's exclusive control, despite the fact that Davies had supplied the tank and some equipment.
3. Whether the evidence rebutted the inference of negligence arising under *res ipsa loquitur*.

HOLDINGS

1. The evidence sufficiently identified the electroplating unit, including the tank, heater, and filter-pump system, as the instrumentality that caused the fire. The appellees were not required to prove the precise manner in which the liquid escaped before invoking *res ipsa loquitur*.
2. *Res ipsa loquitur* applied because the evidence eliminated the reasonable possibility that a defect in the tank supplied by Davies caused the fire, leaving the Government in exclusive control of the instrumentality for purposes of the negligence inference.
3. The Government did not present evidence sufficient to overcome the inference of negligence, and the district court's assessment of the evidence was not clearly erroneous.

KEY QUOTATIONS

“The thing causing the accident must have been under the control of the defendant at the time of the accident.”

“The evidence does not have to absolutely exclude every possible cause other than defendant's negligence, it need only show defendant's negligence was more probably than not the cause.”

FACTUAL BACKGROUND

A fire occurred in a Government-operated prototype electroplating facility at Tinker Air Force Base after a polypropylene tank containing a heated nickel sulfamate solution lost its liquid. The exposed quartz immersion heater became extremely hot and ignited surrounding materials, damaging property belonging to Davies Supply & Manufacturing Company. Davies had supplied the tank and some related equipment, while the Government stored the equipment, operated the facility, and left the apparatus unattended over a weekend. The insurers paid Davies under fire insurance policies and sued the United States as subrogees.

PROCEDURAL HISTORY

The insurance companies sued the United States as subrogees of Davies Supply & Manufacturing Company for fire damage at Tinker Air Force Base. After a bench trial, the district court entered judgment for the insurers, finding that *res ipsa loquitur* established Government negligence. The United States appealed, challenging the

identification and exclusive control elements of the doctrine and arguing that the evidence rebutted the inference of negligence.

DISPOSITION

affirmed

CASES CITED

- Mohawk Drilling Co. v. McCullough Tool Co., 271 F.2d 627 (10th Cir. 1959)
- Canada Dry Ginger Ale, Inc. v. Fisher, 201 Okl. 81, 201 P.2d 245 (1948)
- Downs v. Longfellow Corp., 351 P.2d 999 (Okla. 1960)
- Smith v. Vanier, 307 P.2d 539 (Okla. 1957)
- National Union Fire Ins. Co. v. Elliott, 298 P.2d 448 (Okla. 1956)
- Oklahoma Natural Gas Co. v. Colvert, 260 P.2d 1076 (Okla. 1953)
- Okmulgee Supply Corp. v. Hall, 195 Okl. 481, 158 P.2d 1014 (1945)
- Guilford v. Foster & Davis, 131 Okl. 148, 268 P. 299 (1928)
- St. John's Hospital & School of Nursing v. Chapman, 434 P.2d 160 (Okla. 1967)
- Carter Oil Co. v. Independent Torpedo Co., 107 Okl. 209, 232 P. 419 (1924)
- Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 89 S.Ct. 1562, 23 L.Ed.2d 129 (1969)