

by reason of my participation in the physical fitness examination which is part of the application process for employment with the DCDCC.

For the foregoing reasons, the Court grants Defendant's motion to dismiss. A separate Order dismissing the complaint in its entirety accompanies this Memorandum Opinion.

Case Commentary

The U.S. District Court held that OSHA does not address personal negligence suits and the waiver Ms. Edwards signed barred her recovery.

Case Questions

1. Are you in agreement with the court's decision?
2. Was her injury caused due to her own negligence or to the DCDCC's negligence concerning the wet railing?
3. What do you believe would be an ethical resolution to this case?

Case 20.4

Donita Taylor, Administratrix of Estate of Belford v. Comsat Corp.

2006 U.S. Dist. Lexis 81949 (S.D. WVA)

The issue is whether an employer failed to provide safety equipment to an employee, resulting in the employee's death from a known carcinogen.

COPENHAVER, JR., DISTRICT JUDGE.

This action arises out of the death of plaintiff's son, Matthew Belford, who worked on the construction of the National Radio Astronomy Observatory ("NRAO") facility in Green Bank, West Virginia.

According to plaintiff, the individual defendant, Harry Morton, is alleged to have been "employed by defendants as a supervisor," and Belford was "employed by [the corporate] defendants as a laborer who worked with designing, fabricating, erecting, and painting the National Radio Astronomy Observatory" facility at Green Bank. (Am. Compl. at PP 5,6.) More specifically, it appears that Belford was employed in the capacity of ironworker at certain times in 1998 and 1999. (Comsat Resp. Memo at 3.)

Plaintiff alleges "[t]he defendants knew that the paints it used contained benzene and that benzene was a known human carcinogen and presented a number of health hazards to Matthew S. Belford, including cancer." Plaintiff represents that the defendants (1) required Belford and other workers to work in an environment which involved inhalation and direct bodily contact with benzene and other paint related chemicals; (2) failed to provide Belford and other workers with proper safety equipment to assure adequate protection from benzene and other paint related chemicals; and (3) failed to warn Belford and other workers of the dangerous nature of benzene and other paint related chemicals to which they were exposed. Plaintiff maintains that as a result of the defendants' conduct Belford was repeatedly exposed to benzene while working on the project and this exposure caused Belford to develop acute myelogenous leukemia, a condition which ultimately claimed his life on April 16, 2004.

inced, plaintiff has identified and which Comsat does not dispute, that su Comsat to act in a manner that was consi West Virginia law and further suggests that of the agencies and their officers. The cont tions shall be followed, unless Associated's The contract further provided that "[a]pp toxic and flammable materials shall be ob for Interlac 665, one of the paints used in the sprayer and assistant should always we paint should also wear a cartridge respirate centration is below the national occupati carbon masks become less efficient with ti Plaintiff maintains that Belford was attached affidavits from workers who were ity at the same time as Belford which repr were provided with an inadequate respirat Bank facility.

The "gist" of this action is not that Be ernment compelled to be produced to its d that the harmful exposure to chemicals occ portedly violated both West Virginia law a In view of the foregoing, the court fi connection inasmuch as it cannot show th pursuant to federal direction.

It is accordingly ORDERED that plain

Case Commentary

The Southern District Court of West Virgini ing environment for Belford in violation of

Case Questions

1. Do you agree with the court's decision?
2. Why did Comsat neglect to supply B
3. Should there be criminal charges aga
4. Is there an ethical solution to this cas

Vito Tufariello v. Long Island Railroad

458 F.3d 80 (2nd Cir. 2006); 2006 U.S. App. Le

The issue is whether the Long Island Railroad w ment of equipment to safeguard hearing loss.

The plaintiff, Vito Tufariello, was until h Railroad Company (the "LIRR") as a mech