



Frost Brown Todd Obtains Defense Verdict in Case Arising out of Dual Fatality Gas Explosion

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After a two-day bench trial preceded by significant pre-trial motion practice, a District Judge for the Southern District of Indiana returned a 38 page written opinion entering a judgment in favor of the defendants in a dispute arising out of a dual fatality, natural gas explosion. The explosion occurred in Evansville, Indiana in April 2004. Frost Brown Todd attorneys [Kevin C. Schiferl](#) and Richelle M. Harris represented the defendants, Iowa Pipeline Associates, Inc. (f/k/a KLP Construction Company, Inc.), SEMCO Construction Parent Company and SEMCO Iowa Construction Company in the lawsuit which had a nearly five year long life and multiple claims, cross-claims, and third-party claims.

On April 3, 2004, Evansville water department employees mistakenly accessed a gas stop box near a home, thereby causing a natural gas leak. The water department employees reported the gas leak to Vectren, the public utility which owned the gas line. Several Vectren employees responded to the gas leak, but failed to follow proper procedures to restore service by not checking for the presence of gas inside the home. When they attempted to relight the pilot light on an appliance in the basement, a natural gas explosion occurred. The explosion killed two elderly ladies who were in the home at the time. The Vectren employee performing the relight surprisingly survived the explosion, albeit with major burn and other injuries.

Multiple parties, including the Estate and husband of one of the elderly ladies brought negligence actions against numerous defendants, including Vectren, KLP, and the Evansville Water Department. All such claims eventually settled and/or were dismissed. Vectren asserted cross-claims and a third-party complaint against KLP for breach of contract, negligence, indemnity, and fraud relating to work KLP had performed for Vectren several years prior to the explosion. Vectren argued that KLP was required to remove the valve stop boxes pursuant to a pipeline re-line

contract years prior and its failure to do so constituted a breach of contract and negligence, leading to the explosive events.

Schiferl and Harris, representing KLP, argued there was no breach of the contract, nor was KLP negligent, because Vectren's chief inspector accepted KLP's work without comment on non-removal of any stop box. KLP contended that this constituted a waiver and/or modification of the terms of its contract with Vectren. Additionally, KLP advanced arguments of intervening cause and lack of proximate cause between its work and the explosion.

At trial, the evidence supported the defense and revealed that Vectren had not been diligent in supervising the work on the project as required by its contract. Vectren conceded that not all stop boxes were easy to locate or access; indeed, a post-explosion inspection conducted by Vectren revealed that a high percentage of stop boxes had not been removed on the project. Vectren's inspector further admitted on cross examination to one oral modification and to telling KLP that it did not have to remove stop boxes if they could not be located without excavation or other damage to a customer's yard.

The court found there was no breach of the contract because Vectren waived the contractual requirement that the stop boxes be removed. Therefore, the court concluded that "the personal injuries and property damage incurred by others for which Vectren seeks to be indemnified by KLP, cannot be said to have grown out of the performance of the contract or arisen in any manner, ways or means from an activity required by the contract." The court further found that Vectren's contractual negligence claim against KLP was time-barred because the two-year statute of limitations for negligence claims expired long before the explosion occurred. Moreover, the court did not find an independent duty on the part of KLP to remove all of the stop boxes due to Vectren's waiver.

This was a bittersweet victory for the defense in a heavily litigated case that consumed the parties for almost five years, with significant pre-trial motion practice and resolution of multiple underlying claims and cross-claims.

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