

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

KEVIN A. MAINES,)
)
Plaintiff,)
)
vs.)
)
KENWORTH ALASKA, INC.,)
KENWORTH NORTHWEST, INC.,)
KENWORTH TRUCK COMPANY, a)
division of PACCAR, and JOHN)
DOES 1-5,)
Defendants.)

Case No.: 4FA-S01-1328 CI

ORDER GRANTING DEFENDANT, KENWORTH TRUCK COMPANY'S MOTION FOR
SUMMARY JUDGMENT

Introduction:

Defendant, Kenworth Truck Company, a Division of PACCAR, hereinafter referred to as PACCAR, filed a motion for summary judgment on the issue of collateral estoppel pertaining to a decision and finding made by the Alaska Workers Compensation Board, hereinafter referred to as AWCB. Defendants Kenworth Northwest and Kenworth Alaska have joined in PACCAR's motion for summary judgment. Plaintiff, Kevin A. Maines, hereinafter referred to as Maines, has filed an opposition to PACCAR's motion for summary judgment. The Court is granting PACCAR's motion for summary judgment for the reasons set forth below.

Facts of the Case:

In 1997, PACCAR manufactured a truck known commonly in this case as "Truck 2-6." The truck was distributed by Defendant

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Kenworth Northwest and in February, 1998, sold by Kenworth Alaska to Exclusive Landscaping. Kenworth made some repairs to the truck in 1998, including repairs to the air conditioning system. In June 1999, Exclusive Landscaping employed Maines as a commercial truck driver, assigning Maines to drive Truck 2-6.

In early August, 1999, Maines filed a Notice of Injury with the AWCB. The Notice contended that Maines had been exposed to refrigerant while driving Truck 2-6; that he suffered respiratory illness as a result; and that he required and would require in the future medical treatment and, perhaps, relocation to a warmer climate.

While Maines' claim was pending before the AWCB, on June 12, 2001, Maines filed this lawsuit against the above entitled defendants. Maines' lawsuit asserted that defendants negligently manufactured and repaired/maintained Truck 2-6 such that harmful refrigerant entered the cab of the truck; that Maines was exposed to the refrigerant; and that as a result of exposure, Maines suffered respiratory ailments.

In March, 2002 Maines was examined by Dr. Stephen McCurdy, a California physician. In August, 2002, pursuant to the AWCB proceedings, Maines submitted to an Employer Independent Medical Evaluation by Dr. Dana Headapohl, a Montana physician.

In April, 2003, PACCAR filed its motion for summary judgment to establish, as a matter of law, that it had not negligently manufactured or repaired Truck 2-6; Kenworth filed a

separate motion for summary judgment on the negligent repair claims, as well. PACCAR's motion asserted three bases for entering summary judgment, including (1) that there was no evidence that PACCAR negligently repaired or manufactured the truck; (2) there was no evidence that any refrigerant leaked into the cab of the truck; and (3) there is no scientific evidence that exposure to refrigerant could cause the physical harm complained of by Maines. In support of summary judgment PACCAR offered the affidavit of Dr. Brent Burton.

On May 21, 2003, Maines filed his unified opposition to both motions for summary judgment, attaching as evidence the report of Dr. Headapohl, and an affidavit of a mechanic. Maines furthered supplemented his opposition on May 29, 2003, by providing an unsigned affidavit from his "treating physician" Dr. Stephen McCurdy. On June 25, 2003 the Court granted summary judgment in favor of PACCAR on the basis that "I don't believe that there's a material fact supporting a claim of negligent repair or negligent manufacture that can be attributed to PACCAR."

In late July, 2003 the AWCB held a full hearing on Maines' workers compensation claim. At that hearing, the AWCB considered the evidence of Dr. McCurdy, Dr. Burton, Dr. Bardana, and Dr. Headpohl, the same evidence before this court on summary judgment.

On August 13, 2003, the Court issued summary judgment in favor of Kenworth on the negligent repair claims. The Court suggested that there were questions of fact whether Maines suffered a respiratory injury based on exposure to refrigerant, but found that even if he had suffered such an injury, there is no evidence that the injury was caused by Kenworth. The Court thereafter entered final judgment.

On August 18, 2003, the AWCB issued its determination on the workers compensation claim. The AWCB found that the evidence provided by McCurdy, Headapohl, and Maines' friends and co-workers established a presumption of compensability. Accordingly, the AWCB required the employer to submit "substantial evidence to rebut the presumption. The AWCB noted the following:

Based on the report and testimony of Drs. Bardana and Burton, who found that the employee suffered a "mild annoyance reaction related to the heat and stuffy air in the truck cab in June/July 1999 without evidence of any significant irritation of the upper or lower airways," and no temporary or permanent work-related disability, we find the defendants have presented substantial evidence to overcome the presumption of compensability. Therefore we find the employee must prove his claims by a preponderance of the evidence."

Reviewing the record as a whole, the AWCB then found:

Based on the medical opinions of Drs. Bardana and Burton, we find the employee does not have work related asthma. Instead, he has normal pulmonary function studies, he does

