

1st Circ. Throws Out Titeflex Steel Tubing Class Action

By **David Siegel**

Law360, New York (November 04, 2014, 4:17 PM ET) -- The First Circuit on Tuesday refused to revive a proposed class action alleging Titeflex Corp.'s Gastite natural gas tubing can cause fire if struck by lightning, finding that increased risk of harm from vulnerability to lightning strikes is not sufficient to prove the tubing is defective.

A unanimous three-judge appeals panel upheld a district court judge's decision to dismiss the case for lack of standing, finding plaintiff Tim Kerin failed to provide evidence to support the probability of future injury or instances of actual damage caused by lightning strikes. The panel also said Kerin conceded the Gastite steel tubing met all applicable regulatory standards.

"[Kerin's] purported present injury, 'overpayment' for a defective product and the cost of replacement is thus entirely dependent on an unsupported conclusion that the corrugated stainless steel tubing is defective, coupled with a speculative risk of future injury," Chief Judge Sandra Lynch wrote for the panel.

Kerin's suit claimed that as energy from a nearby lightning strike seeks a path to the ground, it can jump off different pipes and create brief temperature bursts of thousands of degrees, hot enough to puncture the tubing structures and ignite fires, citing warnings from fire departments and roughly 150 purported incidents over the past decade.

Kerin, who lives in Florida, brought claims for strict liability for design and manufacturing defect and failure to warn, plus negligence in design and testing, and asked for costs associated with upgrading his system to make it safer, despite the fact Gastite in his home never malfunctioned or caused a fire.

Titeflex responded that Kerin lacked an injury-in-fact and that his suit was barred by the economic loss doctrine given its failure to allege economic damages unaccompanied by personal injury or harm to property. Moreover, Massachusetts law does not impose strict liability for allegedly defective products outside of a breach of warranty claim, which Kerin did not plead, according to the company's motion to dismiss.

The panel said it agreed with Kerin that if a fire occurred, the harm would be severe, but noted that whether a risk is speculative also depends on the chances that the risked harm will occur. Kerin's complaint references 141 fires involving corrugated stainless steel tubing and lightning strikes, but the panel said he leaves out key information required to determine details like the frequency of lightning strikes or the proportion of homes struck by lightning,

“While he cites to 141 cases of actual fires, Kerin only alleges that both lightning and CSST were ‘involv[ed],’ not that CSST was the cause of the damage or should not have itself failed under the circumstances,” the panel wrote.

Attorneys for the parties did not immediately respond to a request for comment from Law360.

The panel consisted of U.S. Circuit Judges Sandra Lynch, Kenneth Ripple and Bruce Selya.

The plaintiffs are represented by Kevin T. Peters and Erika Todd of Arrowood Peters LLP.

Titeflex is represented by John G. Papianou and Charles B. Casper of Montgomery McCracken Walker & Rhoads LLP and Jeffrey E. Poindexter and Jodi K. Miller of Bulkley Richardson & Gelinas LLP.

The case is Tim Kerin v. Titeflex Corp., case number 14-1130, in the U.S. Court of Appeals for the First Circuit.

--Additional reporting by Andrew Scurria. Editing by Philip Shea.

All Content © 2003-2014, Portfolio Media, Inc.