

FILED

*10 JUN -3 10:52

IN THE DISTRICT COURT OF CRAWFORD COUNTY, KANSAS DIST. COURT
SITTING AT PITTSBURG CRAWFORD COUNTY

BY _____

SUE ELLEN CABELLO, et al.,)
Plaintiffs,)

Vs.)

Case No. 2007-CV-164 P

ALL STAR FIREWORKS, INC., et al.,)
Defendants.)

LINDA ROBINSON, et al.,)
Plaintiffs,)

vs.)

Case No. 2007-CV-165 P

ALL STAR FIREWORKS, INC., et al.,)
Defendants,)

LISA ROBERTS, et al.,)
Plaintiffs,)

vs.)

Case No. 2007-CV-159 P

ALL STAR FIREWORKS, INC., et al.,)
Defendants.)

MEMORANDUM RULING ON MOTIONS FOR SUMMARY JUDGMENT
FILED BY DEFENDANTS MJG TECHNOLOGIES, INC., (“MJG”),
GLOBAL PYROTECHNIC SOLUTIONS, INC., (“GPS”), AND
FIREPOWER DISPLAYS UNLIMITED, INC., (“FDU”)

Each of these cases is brought by the heirs of workers loading boxes of fireworks with electronic matches attached from a bunker and onto a trailer in Crestline, Kansas, during which task, fireworks ignited setting off a series of explosions killing the decedents. The moving

Defendants are non-Kansas corporations which manufacture or supply fireworks or fireworks components including electronic matches.

Movants claim that Plaintiffs are unable to prove the contents of the box which ignited first and specifically that Plaintiffs cannot prove that MJG's products were contained in that box. Plaintiffs claim that under the theory of alternative liability the burden of proving causation shifts to Defendants in cases where multiple Defendants have acted tortiously.

STANDARD FOR SUMMARY JUDGMENT

The standard for Summary Judgment is well known and the parties do not dispute the standard. The standard will be applied to determine this motion.

FINDINGS OF FACT

The court finds the following to be the uncontroverted facts of the case for the purposes of Summary Judgment: (Numbering follows MJG Statement of Uncontroverted Facts and Plaintiffs' Statement of Uncontroverted Facts in Response thereto.)

1. Plaintiff's claims herein arise out of the death of her son, Cody Soper, following an explosion of fireworks on August 18, 2005.
2. On August 18, 2005, at approximately 10:15 a.m., an explosion occurred at a business premises owned and/or occupied by defendants Piedmont Display Fireworks, Inc. ("Piedmont") and Fireworks Spectacular, Inc. ("FSI") at 7349 SE Wyandotte Rd, Galena, KS.
3. Three individuals died following the explosion: Cody Soper, Daniel Groves, and Faron Trey Robinson. Three others were injured: Craig Banke, Michael Dalton, and Ryan Holding.

4. At the time of the explosion, the workers were loading a gooseneck trailer with boxes of pre-squibbed aerial fireworks shells from a storage trailer or magazine. The mobile gooseneck trailer was approximately two feet from the storage trailer or magazine.

5. A surviving worker who was involved in the fireworks loading operation at the time of the accident, Craig Banke, told the Kansas Fire Marshal's office that, immediately before the explosion, he heard a sound that he attributed to the operation of a lift charge from a shell in a box that had just been set down on the floor by Cody Soper.

6. Michael L. Dalton told the Kansas Fire Marshal's office that the eighteenth box loaded into the gooseneck trailer and set down onto the floor by Cody Soper was the source of the ignition.

7. The boxes were passed along in a chain from the storage trailer to the goose neck trailer. The boxes were passed from Faron Trey Robinson to Danny Groves, who were both in the storage trailer, and then passed to Craig Banke and then to Cody Soper, who were in the goose neck trailer. At some point during this process, Craig Banke stepped out of the chain and Ryan Holding took his place.

8. Daniel Groves and Faron Trey Robinson were in the storage trailer at the time of the explosion, and were found dead at the scene by first responders.

9. Cody Soper and Ryan Holding were inside the gooseneck trailer at the time of the explosion. Cody Soper survived the initial explosion, but sustained extensive burns and later died. Ryan Holding received burns to his body, hands, and face.

10. Craig Banke gave an interview to Inspector Kevin Kitterman of the Kansas Fire Marshal's office.

11. In this interview, Craig Banke said that Cody Soper set the box that exploded down on the floor of the gooseneck trailer.

12. Each of the boxes contained a number of variously-sized aerial shells that were pre-squibbed with electric matches affixed to their fuses.

13. Craig Banke told Inspector Kitterman that he heard a sound from the box that he recognized to be the functioning of a lift charge, and that the box then erupted in flames.

14. During the investigation of the incident, Craig Banke produced a handwritten statement describing the accident, in which he states that the explosion began when Cody Soper set down a box on the floor and Mr. Banke heard a lift charge function.

15. The Kansas Fire Marshal's office concluded that the cause of the accident was the result of an ignition source inside the last box handed to Cody Soper as he was loading the gooseneck trailer.

16. Electric matches are used to ignite fireworks shells.

17. Electric matches consist of a piece of copper electrical wire with a combustible matchhead affixed to its midpoint that can be mated with a fireworks fuse. The legs of the electrical copper wire can then be attached to an electrical power source.

18. MJG is a New Jersey-resident corporation that manufactures and sells electric matches. MJG does not design electric matches.

19. Plaintiff's claims against MJG are for Negligence (Count VI), Strict Liability--Product Defect (Count VII), and Strict Liability--Failure to Warn (Count VIII).

20. Plaintiff has also named four other defendants that she alleges supplied electric matches associated with the explosion, and against which Plaintiff also asserts claims for

Negligence (Count VI), Strict Liability--Product Defect (Count VII), and Strict Liability--Failure to Warn (Count VIII). These other defendants are Firepower Displays Unlimited, Inc., Global Pyrotechnic Solutions, Inc., Wolverine Fireworks Display, Inc., and "John Doe Corporation, Inc."

21. Firepower Display Unlimited, Inc. ("Firepower") "is in the business of selling and distributing pyrotechnic products, including electric matches," and "has sold electric matches" to FSI.

22. Plaintiff alleges that Firepower supplied electric matches that were involved in the explosion.

23. Plaintiff alleges that Global Pyrotechnic Solutions, Inc. ("GPS") is engaged in the business of designing, manufacturing, selling, distributing, and transporting electric matches, including electric matches that were involved in the explosion.

24. Plaintiff alleges that Wolverine Fireworks Displays, Inc. ("Wolverine") is engaged in the business of designing, manufacturing, selling, distributing, and transporting electric matches, including electric matches that were involved in the explosion.

25. Plaintiff alleges that "John Doe Corporation, Inc.," "an unknown corporation with its principal place of business in an unknown location," is engaged in the business of designing, manufacturing, selling, distributing, and transporting electric matches, including electric matches that were involved in the explosion.

26. Plaintiff has failed to identify the manufacturer, distributor, seller or supplier of the shells or igniters present in the last box handed to Cody Soper, in which the explosion allegedly originated.

27. FSI, a Kansas Corporate Defendant, is unable to identify the manufacturer of any electric match that was in the box that is the alleged source of the explosion.

28. The Kansas Fire Marshal's office did not recover any unexploded fireworks from either the gooseneck trailer or the magazine.

29. The Kansas Fire Marshal's office did recover some unexploded fireworks from the area outside the two trailers.

30. The Kansas Fire Marshal's office destroyed the recovered unexploded fireworks.

31. Controverted.

32. Immaterial to this motion

33. Immaterial to this motion.

34. On May 20, 2005, the BATF issued a citation to FSI, finding that "The Licensee failed to accurately record the inventory in a record of daily summary transactions for each magazine as required. . . . No later than the close of the next business day, the Licensee will record by the manufacturer's name or brand name, the total quantity received in and removed from each magazine during the day, and the total remaining on hand at the end of each day."

35. FSI was given until August 31, 2005, to correct its record-keeping violations.

36. FSI purchased pre-squibbed shells from Global Pyrotechnics that already had electric matches affixed to the shells.

37. On or about January 26, 2005, FSI purchased a quantity of aerial shells from GPS, to be delivered between April 8-15, 2005.

38. On March 7, 2005, FSI employee Chris Mitchell ordered from MJG 45,000 6-foot lead wire electric matches and 5,400 9-foot lead wire electric matches, to be shipped by April 15, 2005.

39. On April 6, 2005, MJG's vice-president Jeff Genzel made a handwritten note on Invoice # 271, during a telephone conversation with FSI employee Chris Mitchell, memorializing their agreement that FSI would reduce its March 7, 2005 order by 14 cases because the company FSI acquired had Daveyfire brand electric matches.

40. On April 15, 2005, MJG shipped 28,800 6-foot lead wire electric matches and 5,940 9-foot lead wire electric matches to FSI by Roadway Express, Invoice # 271.

41. On June 8, 2005, Firepower shipped 10 cases of 10-foot wire electric matches to FSI.

42. On August 4, 2005, Firepower shipped 10 cases of 10-foot wire electric matches to FSI.

43. On or about August 12, 2005, Piedmont purchased from GPS a quantity of aerial fireworks shells. Craig Banke states that some of these shells were pre-squibbed with electric matches.

44. The Sales Order for the two Live on the Levee shows reflects the sale of some 624 "10' FP Elect. Ignitor" and some 650 "10' FP Elect. Ignitor."

45. Controverted.

46. Controverted.

47. Craig Banke was interviewed by Kevin Kitterman of the Kansas Fire Marshal's Office on September 9, 2005.

48. Mr. Banke's interview included the following:

[T]hese squibs that we've got. We used to get Davey Fire and they were all shunted. These last bunch of squibs that we got we they are not quite shunted and we had to shunt every one of them.

Q: Really?

A: As we squib em. You know I mean after you squib several thousand shells I don't know if that

Q: When you say they are not shunted. I know what you're talking about but ah are you saying that the wires are completely separated and you are having to re-shunt them

A: They just barely have a half a twist to them.

Q: They are not shunted well?

A: They are not shunted well no and um you know the thing is we've got a job of squibbing and shunting em and sometime you do such a routine job of squibbing, I don't know if, that's why I don't know if, maybe those shells weren't shunted, maybe it was static, you know. . . .

Q: So when ever you ah squib the shells all of the time you're saying you have to reshunt

A: What we tried to keep everyone doing is was shunt and then squib, shunt squib and then you know human error of just such routine I maybe some got passed up you just start squibbing cause you're . . . I mean years before everything was shunting nice so all you had to do was squib and you get such a routine you forget about shunting. I almost forget about shunting but you know I'd shunt em as much as I remembered you know.

49. Controverted.

50. Banke stated that he believed the first firework to detonate was a large diameter shell, based on his experience, due to the flash size and timing.

51. Some of the same types of shells purchased by Piedmont from MJG were to be shipped to the Live on the Levee show.

52. Plaintiffs have alleged that MJG designed, manufactured, sold, distributed, and transported pyrotechnics.

53. All suppliers that were identified by Fireworks Spectacular as providing electric matches for the Live on the Levee show have been named as defendants in this action.

54. When this case was pending in the Jackson County (Mo.) Circuit Court, Fireworks Spectacular identified the following as potential sources of the electric matches that were used in the fireworks show that exploded on August 18, 2005: Manufacturers: Firepower Displays Unlimited, Inc.; MJG Technologies, Inc. and an “unknown manufacturer.”

55. As to the unknown manufacturer, Fireworks Spectacular identified the “seller” as: Wolverine Fireworks Display, Inc.

56. As to the unknown manufacturer, Fireworks Spectacular listed the “supplier” as: Global Pyrotechnics Solutions, Inc. Global Pyrotechnic Solutions, Inc. is a defendant in this case.

57. All of the potential manufacturers, supplies or sellers identified by Fireworks Spectacular have been joined in this lawsuit.

58. The Kansas State Fire Marshal who investigated the incident opined that the incident was the result of ignition source within the box which exploded first and that pre-wiring of the fireworks would be the most plausible ignition source.

59. Craig Banke, an employee of Fireworks Spectacular, gave an interview to the Fire Marshal and concluded that the explosion initiated when an e-match went off. In the industry, “e-match,” “electric match,” “squib” and “electric igniter” are used interchangeably.

60. Banke stated that Fireworks Spectacular used both MJG and Firepower e-matches.

61. The Sales Order for the Live on the Levee shows for August 20, 2005 and August 21, 2005 both state at the end, “10’ FP Elect Igniter.”

62. Susan Harvey, Corporate Representative for GPS, and Steven Houser, All Star’s General Manager, both testified that “FP” stands for Firepower, a defendant in this case.

63. Controverted.

64. Controverted.

CONCLUSIONS OF LAW

KSA 60-256(c) provides in part, concerning motions for summary judgment:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

MJG maintains that plaintiffs cannot prove causation. Plaintiffs agree and rely upon the theory of alternative liability from the *Restatement(Second) of Torts (1965)* Section 433B(3):

Where the conduct of two or more actors is tortuous, and it is proved that harm has been caused to the plaintiff by only one of them, but there is uncertainty as to which one has caused it, the burden is upon each such actor to prove that he has not caused the harm.

No Kansas cases have been cited indicating that the state of Kansas has adopted this Theory of Alternative Liability.

This court cannot disagree with the ruling of Judge Jack in *Banke v. All-Star Fireworks, Inc., et al*, Crawford County case no. 2006 CV 215 P, wherein a surviving co-worker of the decedents in these cases was suing the same defendants on the same theory. This court adopts generally the conclusions of law therein and a copy of that decision is attached hereto as Exhibit A. (While the *Banke* decision designates the theory as Enterprise Liability Theory it is designated as Alternative Liability Theory herein and both refer to the same language from the Restatement.)

In addition to the matters argued in *Banke*, Plaintiffs have argued herein public policy reasons for the adoption of the Alternative Liability Theory. The theory is a modern trend of courts in the United States and cite some 11 states which have adopted it. The theory's purpose is to avoid permitting proved wrongdoers to escape liability because "the nature of their conduct and the resulting harm has made it difficult or impossible to prove which of them has caused the harm." *Restatement (Second) of Torts* Sect. 433B(3) cmt. f (1965) (emphasis added).

MJG counters that the policy reason is to "shift the burden to the defendants who have made their products unidentifiable or who have destroyed records that would allow for product identification". This is not the case here, as it is the Kansas defendants' poor record keeping that makes identification of the contents of the box or boxes difficult or impossible.

Plaintiffs counter this argument by arguing that MJG and other non-Kansas defendants produced or sold dangerous products and put them into commerce where they know they would be co-mingled with other such products.

The claimed public policy reasons may have some attraction. While Plaintiffs here are put in an untenable situation, that is not sufficiently persuasive to convince the court to adopt the Alternative Liability Theory. This court agrees with Judge Jack that even if the theory were adopted, Plaintiffs would not be able to meet the elements required by the theory as discussed at pages 6 and 7 of the *Banke* decision.


Again, even if the court adopted the theory of alternative liability, the Plaintiffs are unable to satisfy the elements because they cannot show what products were in the magazine and trailer and specifically cannot show what products were in the box which initiated the disaster.

In *Marshal v. Heartland Park Topeka*, 274 Kan. 294, 49 P.2d 501, at 298 the court states:

We further said in *Saliba v. Union Pacific R.R. Co.*, 264 Kan. 128, 131, 955 P.2d 1189 (1998), that “[a] defendant is entitled to summary judgment if the defendant can establish the absence of evidence necessary to support an essential element of the plaintiff’s case.” But, as we stated in *Brown v. Wichita State University, P.E.C., Inc.*, 217 Kan. 661, 665, 538 P.2d 713 (1975), the party opposing the motion “is to be given the benefit of all reasonable inferences to be drawn from the evidentiary matter and all facts asserted by the party opposing the motion and supported by affidavits or other evidentiary material must be taken as true.”

For the reasons stated above, Defendants MJG, GPS and FDU are granted summary judgment against all Plaintiffs.

BY THE COURT IT IS SO ORDERED.


DISTRICT JUDGE – Assigned
11th JUDICIAL DISTRICT
DIVISION 2

FILED
IN THE DISTRICT COURT OF CRAWFORD COUNTY, KANSAS

CRAIG BANKE,
Plaintiff,

v.

ALL-STAR FIREWORKS, INC., et al.,
Defendants.

'09 JUL 21 10:28

CLERK OF DISTRICT COURT
CRAWFORD COUNTY Case No. 06 CV 215 P

MEMORANDUM RULING

Now on this 10th day of July, 2009, the court finds that the motions for summary judgment of defendants MJG Technologies, Inc. ("MJG"), Firepower Displays Unlimited, Inc. ("FDU"), and Global Pyrotechnic Solutions ("GPS") should be and are hereby GRANTED.

Standard for Summary Judgment

The parties agree on the standard for summary judgment set out by MJG, FDU and GPS in their various Suggestions in Support of Motion for Summary Judgment. Because those standards are well known, they will not be repeated here but are adopted in determining the defendants' motions.

Findings of Fact

Each of these defendants set out separate contentions of uncontroverted material facts in support of their respective motions for summary judgment. Those will be treated separately below, though the same legal analysis applies to each motion.

MJG Facts

MJG set out 51 contentions of uncontroverted material facts in support of its motion for summary judgment. Statements 1-5, 7-11, 13-26, 29-46, 49 and 50 were uncontroverted by Plaintiff Craig Banke (“Banke”), though he did allege additional facts regarding statements 17 and 19, and alleged his own Additional Statement A., which was not controverted by MJG. Banke partially admitted statement 28. For purposes of summary judgment, the court accepts as true all uncontroverted facts.

Banke stated that statements 6, 12, 27, part of 28, 47, 48 and 51 are controverted.

After examining the exhibits submitted by the parties and statements of counsel, the court makes the following findings:

6. MJG states that Banke told the Kansas Fire Marshal’s office that the 18th box loaded into the trailer was the source of ignition. Banke claims in controverting this statement that Defendant’s Exhibit C, page 2, identifies the 4th or 5th box as the one initiating the explosion in this case. However, that exhibit (which is Banke’s own statement) indicates that it was the 4th or 5th box “that Ryan received from Danny and handed to Cody Soper” that initiated the explosion. Banke also indicated that he had been handing boxes to Cody Soper prior to Ryan taking Banke’s place while Banke took a break. The Fire Marshal’s report at Exhibit B indicates it was the 18th box, but does not give an exact citation for the source of that information. In his statement to the Kansas Fire Marshal at KSFMO 000035, Banke stated, “a dozen boxes have already been loaded into the mobile trailer.”

The court agrees with MJG’s conclusion that for purposes of this summary judgment motion, it does not really matter whether it was the 4th or 5th or 12th or 18th box

that ignited the explosion, because Banke admits he cannot identify the contents of any of those boxes, and his legal theory of recovery does not rely on determination of this fact. It is uncontroverted that the explosion initiated in a box set down by Cody Soper in the gooseneck trailer (see uncontroverted statement 13).

12. This fact is immaterial to the decision in this case.
27. This fact is immaterial to the decision in this case.
28. This fact is immaterial to the decision in this case.
47. Banke indicated he could not respond to this fact until he had the opportunity to depose Jeff Genzel and fully examine all records of MJG. The court is unaware of any additional information filed by Banke controverting this fact; sufficient time has passed for such information to have been gathered if it exists, so this fact is found to be uncontroverted.
48. Same as #47.
51. The court overrules Banke's objection to this statement of fact. However, the court finds that whether the statement is read as asserted by MJG or by Banke (and on a motion for summary judgment the statement must be read in the light most favorable to the party opposing the motion), it does not effect the decision of the court regarding the legal issues raised by MJG in its motion for summary judgment.

FDU Facts

FDU set out 46 contentions of uncontroverted material facts in support of its motion for summary judgment. Statements 1-45 were uncontroverted by Banke. Banke

controverted statement 46, which is identical to MJG's statement 51, on which the court ruled above. For purposes of summary judgment, the court accepts as true all uncontroverted facts.

GPS Facts

GPS set out 46 contentions of uncontroverted material facts in support of its motion for summary judgment. Statements 1-44, were uncontroverted by Banke, though he did allege additional facts or made arguments from the facts regarding statements 9, 10, 14, 15, 20, 21, and 28, and alleged his own Additional Statement A.

For purposes of summary judgment, the court accepts as true all uncontroverted facts.

The court finds that Banke's additional facts or arguments to statements 10, 14, 15, 20, 21 and 28 are not material to the issue before the court in determining GPS's motion for summary judgment

Banke stated that statements 45 and 46 are controverted.

GPS controverted Banke's Additional Statement A.

After examining the exhibits submitted by the parties and statements of counsel, the court makes the following findings regarding the controverted statements:

The court agrees with Banke's contention that his statement contained in statement 45 does not support the conclusion reached by GPS in that statement. However, given the other facts already admitted, the court finds this fact to be immaterial to the issue before the court.

Regarding statement 46, this is the same as MJG's statement 51 and FDU's statement 46 decided above, and for the reasons given above, the court finds that regardless of how this statement is read, it does not effect the decision of the court.

Regarding Banke's Additional Fact A, the court finds that Banke did not controvert GPS's statement that it does not manufacture electric matches (See statement 32). This failure to controvert such a basic fact takes precedence over Banke's previous answer to MJG's Interrogatory #22 that is used to support Banke's Additional Fact A.

Conclusions of Law

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." K.S.A. 60-256.

MJG, FDU and GPS move for summary judgment based on the inability of Banke to prove causation. That is, Banke cannot identify the mechanism that caused the explosion that resulted in his injuries, nor can he identify the products present at the time of the explosion, including products made by MJG, FDU or GPS.

Banke does not deny this, but argues that his claim should survive because the court should adopt the "Enterprise Liability Theory" as set out in 433B of the Restatement of Torts Second. As stated by Banke, that theory provides "that where the conduct of the Defendants is tortious and that harm has been caused to the Plaintiff by potentially only one of the Defendants, and there is uncertainty and it cannot be proved exactly which Defendant caused the harm, then the burden is shifted to each tort-feasor to

prove that he has not caused the harm.” Banke’s Response, p.7. In support of this argument to fundamentally change Kansas tort law, Banke primarily relies on Centrone v. Schmidt & Sons, Inc., 452 N.Y.S.2d 299 (N.Y. Sup. 1982).

Centrone is a 1982 New York Supreme Court case. That is, it is a trial and not an appellate court decision, and so it carries very little precedential weight, even in New York. Further, the Centrone court itself said that “enterprise liability” had been rejected in two separate cases and “has not been adopted in New York.” (Centrone, unnumbered page 4 of Banke’s 5-page document). It appears that the only reason it was even being considered in Centrone was that a prior ruling had been made that the third-party complaint had stated a cause of action, so the Centrone trial judge found that to be the law of the case regarding enterprise liability. And even with that, Centrone found that the plaintiff had provided almost no evidence of tortious action and only denied the motion for summary judgment to give the third-party plaintiff additional time to try to find such evidence that was in the exclusive control of the defendants.

Banke has not cited, nor can the court find, any Kansas cases that have adopted the “enterprise theory”. Further, Banke has cited no public policy arguments as to why this court should adopt a theory that significantly changes Kansas’s law regarding causation and tort liability. While the court could speculate on the benefits or burdens of such an adoption, it declines to do so.

However, even if Kansas did adopt such a theory, would it apply in this case, and would it require the denial of the motions of MJG, FDU and GPS? The court believes it would not.

As this court understands the enterprise theory, it might be useful in some situations. For example, if two hunters negligently fired their shotguns and an innocent bystander was injured by only one pellet, but the victim could not prove which hunter's shot had hit him, then an enterprise theory of liability might be warranted. However, the victim would still have to prove that each of the hunters were actually present and had acted negligently (that is, he could not sue a hunter who had not fired his weapon, or who had fired his weapon in the opposite direction, nor could he sue a hunter who was not present when the shots were fired) before any liability could attach. Here, Banke has no evidence that MJG, FDU or GPS supplied products that were actually in the box that ignited and initiated the explosion, let alone that any of these defendants was in any way negligent. This simply is not the type of fact situation where the enterprise theory would be appropriate, even if Kansas had adopted it.

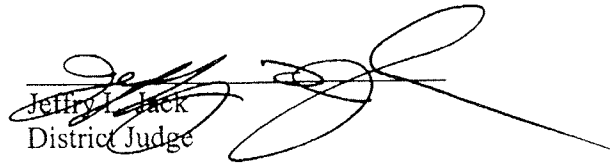
Conclusion

Banke brings this action against MJG, FDU and GPS on theories of negligence and strict liability (product defect and failure to warn) for injuries he suffered as the result of an explosion on August 18, 2005. For the reasons stated above, and adopting the arguments of MJG, FDU and GPS as set out in their briefs in support of their motions for summary judgment, the court finds that there are no material issues of fact, and that MJG, FDU and GPS are entitled to summary judgment. Banke cannot prove causation, an essential element in finding liability, and Kansas has not adopted an enterprise theory that would find liability against these three defendants without evidence of causation.

The attorneys for MJG, FDU and GPS shall each prepare a Journal Entry applicable to their client setting out the findings in this Memorandum Ruling and entering judgment in their favor.

IT IS SO ORDERED

DATED: 7/10/09


Jeffrey L. Jack
District Judge

8 Certificate of Clerk of the District Court for Crawford County. The above instrument is a correct copy which is on file or on record in this court.

Done this 24 day of May, 2009
Clerk _____ by Jana Layton Deputy