

Defense Verdict in Wrongful Death Timber Case Involving Claims of Racial Discrimination

Jim Garrett and Evans Bailey recently received a defense verdict from a Monroe County jury in a wrongful death action which also alleged that the decedent was discriminated against due to his race under 42 U.S.C. Sec. 1981.

The facts of the accident leading to the lawsuit were relatively undisputed. The Decedent, an experienced timber cutter, was killed while cutting timber in April 2007. He used a chainsaw to fell a beech tree, but the beech tree struck a nearby snag or dead tree. The snag struck the Decedent and caused the injuries which led to his death.

At the time of the accident, the Decedent was working as a timber contractor for the Defendant. The Defendant, a timber dealer or supplier, was in the business of acquiring timber cutting rights from landowners and then contracting out the cutting jobs to contractors, like the Decedent.

The case, however, wound up encompassing more than just the simple facts of the accident. The Plaintiff, the administratrix of the Decedent's estate, brought suit against the Defendant in early 2009. The original complaint filed in Monroe County (the Defendant's principle place of business) was stricken due to inflammatory racial language. The subsequent amended complaint alleged worker's compensation claims, wrongful death, and racial discrimination leading to the Decedent's death under 42 U.S.C. Sec. 1981.

After discovery, the Defendant moved for summary judgment on all of the Plaintiff's claims. The motion argued, in relevant

part, that the Decedent was an independent contractor to whom no duty was owed, and that discrimination could not be proven. The Court found that the Decedent was an independent contractor and dismissed the worker's compensation claims. The remaining claims were set for trial on September 15, 2010.

Evans and Jim argued a simple case to the jury: the Decedent made a lapse in judgment when he either (1) cut down the beech tree before cutting the snag (it was his regular practice to cut down snags first) or (2) decided not to use an available mechanical tree cutter which had a protective cab that would have prevented his injuries.

The Plaintiff's case was far more complex. She argued that despite the Decedent's status as an independent contractor, he was forced to cut down the beech tree by the Defendant. This was also presented in spite of evidence that the Defendant had never been to the site of the accident and had never instructed the Decedent on what equipment to use when felling a tree. The Plaintiff argued that the Decedent had to cut down this tree because the job was "clear cut," the Decedent owed money to the Defendant for certain equipment, and that the Decedent was regularly given more dangerous tracts, because of his race, and could not complain about this treatment or walk off the job.

After three days of testimony, the court denied Evans and Jim's motion for judgment as a matter of law on all counts, and the jury was charged on wrongful death and racial discrimination. The jury deliberated for approximately an hour and a half before delivering a defense verdict on all counts.