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FILE: Buildit Memo

RE: Stoudt Case

**FACTS**

Our client, Carol Stoudt, was sitting in her parked car on the Kent State campus during the night of November 10th, 2007. A bulldozer smashed into her car causing her to suffer a fractured hip, fractured right arm, and head injuries.Three Kent State freshmen, who are third parties to this action, operated the bulldozer at the time of the accident after deciding to use it to block a rival team’s bus during the Kent State’s homecoming game.

The driver of the bulldozer, Colin Meloy, had a blood alcohol level of 0.13. Colin resides in the Tain Freshman Dormitory along with the other two freshmen Chris Funk and Jenny Conlee, who each had Blood Alcohol Levels of 0.15 and 0.12, respectively. The potential defendant, Buildit, left the bulldozer unattended on the construction site overnight. Colin had successfully attempted to operate a back hoe a month earlier from this same construction site narrowly missing a forklift and trailer on the site. Several construction workers witnessed this and the foreman, Joe Steel, had reprimanded Colin.

Buildit, a construction company, controls both the construction site and bulldozer involved in the accident. Even though, Buildit had previous trouble with freshmen trying to operate the equipment on their site, Buildit had inadvertently left the keys in the ignition of the bulldozer during the night of the accident. Build did have a policy of securing the vehicles or accounting for the keys. On five separate occasions, Buildit found beer bottles inside the cabs of construction equipment several times prior to the accident.

**DISCUSSION**

Carol Stoudt’s case will satisfy the causation requirement against Buildit for failing to secure a piece of construction equipment because it was foreseeable that Keystone State freshmen might operate the vehicle and Buildit had notice that the freshmen might drive the equipment drunk and incompetently.

The Supreme Court of Pennsylvania will consider a defendant’s failure to secure a vehicle a proximate cause of an accident, caused by another third party, if it was foreseeable that the third party would attempt to operate the vehicle and it was foreseeable that the third party would be an incompetent operator. *See Anderson v. Bushong Pontiac Co.*, 171 A.2d 771 (Pa. 1961); *Liney v. Chestnut Motors, Inc.*, 218 A.2d 336 (Pa. 1966); *Glass v. Freeman*, 240 A.2d 825 (Pa. 1968).

The Supreme Court of Pennsylvania, in deciding *Anderson*, found a car lot owner’s failure to secure a vehicle the proximate cause of a car accident involving a fourteen year old, third party car thief. *Anderson*, 171 A.2d 771. The defendant had filed a police report regarding stolen keys for a vehicle while leaving the vehicle unattended and unsecured overnight. *Id.* at 772. The fourteen year old, who had taken the keys, returned to the lot, started the car, began operating it, and ran it into the plaintiff. *Id.* at 772. First, the court concluded that the defendant should have foreseen that whoever stole the keys would probably return to steal the car and that it might be one of the “children of immature years” who had a history of playing in and around the cars. *Id.* at 774. Also, the court determine that the defendant should have been put on notice that a child would be an incompetent driver since it is common knowledge that children lack the maturity to be a competent drivers, and the state prevents persons under the age of sixteen to drive due to this incompetence. *Id*. at 774.

The analysis had a different outcome in *Liney*, where the same Supreme Court of Pennsylvania did not find defendant’s failure to secure a vehicle a proximate cause for an accident caused by a car thief because the defendant could not foresee that the third party would drive incompetently. 218 A.2d 336. The employees of an automobile business, owned by the defendant, failed to secure a client’s vehicle by leaving it parked in the street with the keys in the ignition. *Id*. at 337. The area had a high reputation of auto theft but not theft by incompetent drivers, and, unlike *Anderson*, teenagers or other types of incompetent drivers were not known to frequent the lot; therefore, while the employees and owner could reasonably foresee that the car would be stolen, they were not on notice that an incompetent operator would steal and operate the vehicle. *Id.* at 338; 171 A.2d at 774.

Finally, the *Glass* court applied the same analysis to construction equipment, which found a father’s failure to secure a tractor, by leaving it unattended and running, a proximate cause to an accident caused by his seven year old child who climbed into the tractor, began operating it, and ran the tractor into the plaintiff. *Glass*, 240 A.2d 825. First, the court determined that the father knew the child was in the area “due to the favorable verdict” of the jury, and he should have reasonably foreseen that the child would try to operate the tractor because of the common knowledge of a child’s behavior to mimic their parent’s actions. *Id*. at 828. Also, the court easily recognized that a seven year old child would drive a tractor incompetently. *Id*. at 829.

Buildit’s failure to secure a bulldozer by leaving it unattended and over night with the keys in the ignition will be found a proximate cause to an accident caused by three inebriated college freshman operating the bulldozer and smashing it into Carol Stoudt’s car. Our client, Carol Stoudt occupied the car at the time of the accident and suffered several physical injuries. The burden on Buildit to secure the keys would have been small by implementing a simple, nightly check of the equipment on the lot. Also, the freshman had reported commandeering the bulldozer to try and block the rival team’s school bus during the home coming game. If three inebriated freshman could think of a way to secure a vehicle on the campus, Buildit probably could have found creative ways to physically secure the equipment.

First, Buildit should have foreseen that the freshmen would try and operate the construction equipment. A month prior to the accident, one of the freshmen involved in the accident had boarded a back hoe and began operating it, narrowly missing a forklift and a jobsite trailer. Like the teenagers in *Anderson*, the freshmen not only had a history of playing around the vehicles but had also successfully operated a vehicle. 171 A.2d 771, 772.

Finally, Buildit should have been put on notice that freshmen commandeering the equipment might drive drunk and incompetently. On five occasions, Buildit crew members found beer bottles inside the operating compartments of the equipment. Like the common knowledge of seven year olds in *Glass*, it is common knowledge that college freshman tend to drink lots of alcohol. 240 A.2d 825, 828. Knowing these facts and considering that a freshman dorm was close by, Buildit should have been put on notice that any freshman trying to operate the construction equipment might be intoxicated. Like underage driving in *Anderson*, the law provides stiff penalties for driving intoxicated due to it lowering a driver’s level of competence. 171 A.2d 771, 772.

Because it was foreseeable that Keystone State freshmen might operate the vehicle and Buildit had notice that the freshmen might drive the equipment drunk and incompetently, Carol Stoudt’s case will satisfy the causation requirement against Buildit for failing to secure a piece of construction equipment.