

SUPREME COURT OF LOUISIANA

NO. 15-CC-0274

TRUMAN STANLEY, III

V.

AIRGAS-SOUTHWEST, INC., ET AL.

JOHNSON, C.J., dissents and assigns reasons.

Plaintiff, Truman Stanley, III, was employed by Airgas-Southwest, Inc., a company engaged in the business of filling and re-filling gas cylinders. Mr. Stanley was seriously injured and lost his right arm below the elbow when a cylinder being filled with compressed gas by a coworker exploded. The cylinder at issue was apparently damaged and had been previously marked with the word "leak" along with a circle and arrow indicating the spot of the leak. However, contrary to Airgas' own policy, *the damaged cylinder was not destroyed*. Instead, repair was attempted by replacing the valve.

In opposing Airgas' Motion for Summary Judgment, Mr. Stanley submitted the affidavit of a mechanical engineer who stated that filling a cylinder with compressed gas is a hazardous activity and that when the cylinder has a crack in its shell, *catastrophic failure is assured*. He further opined that re-valving and placing the cylinder back into service, instead of condemning or destroying it, was the primary cause of the explosion and Mr. Stanley's injuries. Additionally, several Airgas employees testified that a leaking cylinder could not be re-used and that a cracked or leaking cylinder was certain to explode and fail if used. Contrary to the majority, I find Mr. Stanley submitted sufficient evidence that his injury was substantially certain to occur as a result of Airgas' actions and thus he should be

allowed to proceed with his tort suit against his employer.

For these reasons and for reasons I expressed in my dissent in *Reeves v. Structural Preservation Systems*, 98-1795 (La. 3/12/99), 731 So. 2d 208, I find the lower courts properly denied Airgas' motion for summary judgment. Therefore, I respectfully dissent and would deny Airgas' writ application.