06/03/2025 "See News Release 026 for any Concurrences and/or Dissents."

The Supreme Court of the State of Louisiana

BRADY HARDISTY

No. 2025-CC-00239

VS.

DUSTY L. WALKER, ALLISON G. WALKER, NEAL P. MARTIN, STACEY E. MARTIN, KODY WINCH, AMBER WINCH, BRAD BULLER, TURF GRASS FARMS, INC., STRIDE A WAY LLC, DIRECT AERIAL SERVICES, LLC, KCW DISPOSAL, LLC; WR INVESTMENTS, LLC, GULF COAST LAND SOLUTIONS, LLC, BULLWIN INDUSTRIAL SERVICES, LLC, BULLWIN ENTERPRISES LLC, CATERPILLAR INC., LOUISIANA MACHINERY COMPANY, L.L.C., PROGRESSIVE TRACTOR & IMPLEMENT CO., L.L.C., PROGRESSIVE TRACTOR HOLDINGS, L.L.C., CNH INDUSTRIAL AMERICA LLC, CNH INDUSTRIAL CAPITAL AMERICAN LLC, AND REYNOLDS SCRAPERS, LLC

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IN RE: Caterpillar Inc. - Applicant Defendant; Applying For Supervisory Writ, Parish of Calcasieu, 14th Judicial District Court Number(s) 2022-1226 D, Court of Appeal, Third Circuit, Number(s) CW 24-00637;

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June 03, 2025

Writ application granted. See per curiam.

JDH

JLW

WJC

JBM

PDG

JMG

CRC

Supreme Court of Louisiana
June 03, 2025

Katie Marjanovic

Chief Deputy Clerk of Court
For the Court

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On Supervisory Writ to the 14th Judicial District Court, Parish of Calcasieu

PER CURIAM

We ordered briefing in this products liability case to determine whether the district court erred in denying the manufacturer's motion for summary judgment. For the reasons that follow, we reverse the judgment of the district court.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Brady Hardisty, and a coworker, Dustin Guillory, were using a Caterpillar D3K2 track-type tractor bulldozer to clear some land when the bulldozer became stuck in the mud. The men attached chains from a tractor to the bulldozer in order to pull it from the mud. Plaintiff got inside the bulldozer's operator's compartment while Mr. Guillory operated the tractor. As the men attempted to tow the bulldozer, one of the chains snapped and flew backward. The chain broke the glass of the operator's compartment and struck plaintiff in the head and face.

As a result of injuries sustained in the accident, plaintiff filed suit against several parties, including the manufacturer of the bulldozer, Caterpillar, Inc.

("Caterpillar"). Plaintiff alleged, in part, that Caterpillar was liable to him under the Louisiana Products Liability Act ("LPLA") as the bulldozer was unreasonably dangerous.

Caterpillar moved for summary judgment. It argued plaintiff's attempt to pull the bulldozer from the mud with chains did not constitute a "reasonably anticipated use" of the bulldozer for purposes of the LPLA. In support, Caterpillar cited the bulldozer's Operation and Maintenance Manual which set forth the instructions for towing the machine and explicitly warned the user against the use of chains:

> Before you tow the machine, make sure that the tow line or the tow bar is in good condition. Make sure that the tow line or the tow bar has enough strength for the towing procedure that is involved. The strength of the tow line or of the tow bar should be at least 150 percent of the gross weight of the towing machine. This requirement is for a disabled machine that is stuck in the mud and for towing on a grade.
>
> Attach the cable to the towing eye on the front of the machine if you are towing the machine forward. Attach the cable to the drawbar pin on the rear of the machine if you are towing the machine backward.
>
> **Do not use a chain for pulling a disabled machine. A chain link can break. This action may cause personal injury**. Use a wire cable with ends that have loops or rings. Put an observer in a safe position in order to watch the pulling procedure. The observer can stop the procedure if the wire cable starts to break. Stop pulling whenever the towing machine moves without moving the towed machine. [emphasis added].

Plaintiff opposed the motion asserting there were questions of fact over whether Caterpillar knew or should have known that users were using the product in contravention of the warning. Plaintiff relied on the affidavit of his expert engineer, Dr. Harold Ornstein, who opined, "Caterpillar clearly knew that operators of its dozers would attempt to use a chain to tow its dozers, because Caterpillar attempted to warn against such use. . . ."

After a hearing, the district court denied Caterpillar's motion for summary judgment on the question of whether plaintiff was engaged in a reasonably anticipated use of the product at the time of his injury.[1] In written reasons for judgment, the court stated "there are genuine issues of material fact as to whether the alleged damages arose from a reasonably anticipated use of the product, as required by La. RS 9:2800.54."

Caterpillar applied for supervisory review. The court of appeal denied the writ, with one judge dissenting. The dissenting judge found plaintiff failed to produce any evidence showing Caterpillar had knowledge of misuse in the face of the warning.

Upon Caterpillar's application, we ordered written briefing pursuant to the provisions of La. Code Civ. P. art. 966(H). Having received briefs from both parties, we now review the district court's ruling on the motion for summary judgment on the merits.[2]

DISCUSSION

A ruling on a motion for summary judgment is reviewed under a de novo standard, with the appellate court using the same criteria that govern the district court's determination of whether summary judgment is appropriate, i.e., whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. *Kite v. Rapides Par. Sheriff's Dep't*, 2024-01351 (La. 2/28/25), 401 So. 3d 1262, 1264–65; *Diaz-Molina v. Flower*, 2023-01135 (La.

[1] The district court granted Caterpillar's motion in part as to plaintiff's negligence and breach of express warranty claims. This portion of the ruling is not before us and will not be discussed further.

[2] Plaintiff filed a motion for oral argument. After careful consideration, we deny the motion.

12/19/23), 374 So. 3d 950, 952; *Catzen v. Toney*, 2022-01261 (La. 1/18/23), 352 So. 3d 972, 974; *Jones v. Whips Elec., LLC*, 2022-01035 (La. 11/22/22), 350 So. 3d 846, 848. Pursuant to La. Code Civ. P. art. 966(D)(1), the burden on the party moving for summary judgment "does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense." *See Reynolds v. Bordelon*, 2014-2371 (La. 6/30/15), 172 So. 3d 607, 610–11. When a motion for summary judgment is made and supported, an adverse party may not rest on the mere allegations or denials of his pleadings, but his response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial. La. Code Civ. P. art. 967(B); *Bufkin v. Felipe's Louisiana, LLC*, 2014-0288 (La. 10/15/14), 171 So. 3d 851, 858. Once a motion for summary judgment has been properly supported by the moving party, the failure of the non-moving party to produce evidence of a material factual dispute mandates the granting of the motion. *Dauzat v. Curnest Guillot Logging Inc*., 2008-0528 (La. 12/2/08), 995 So. 2d 1184, 1187 (citing *Babin v. Winn–Dixie Louisiana, Inc*., 2000-0078 (La. 6/30/00), 764 So. 2d 37, 40).

In order to establish liability under the LPLA, La. R.S. 9:2800.54(A) requires a showing that the damage arose form a "reasonably anticipated use" of the product:

> A. The manufacturer of a product shall be liable to a claimant for damage proximately caused by a characteristic of the product that renders the product unreasonably dangerous **when such damage arose from a reasonably anticipated use of the product by the claimant or another person or entity**. [emphasis added]

"Reasonably anticipated use" is defined in La. R.S. 8:2800.53(7) as follows:

> (7) "Reasonably anticipated use" means a use or handling of a product that the product's manufacturer should reasonably expect of an ordinary person in the same or similar circumstances.

The standard for determining a reasonably anticipated use is an objective one, which "mandates that a court ask whether the person was engaged in a reasonably anticipated use of the product, not whether that person was a reasonably anticipated user." *Butz v. Lynch*, 1999-1070 (La. App. 1 Cir. 6/23/00), 762 So. 2d 1214, 1218, *writ denied*, 2000-2660 (La. 11/17/00), 774 So. 2d 980. When a manufacturer expressly warns against using the product in a certain way in clear and direct language, it is expected that an ordinary consumer would not use the product in contravention of the express warning. *Lockart v. Kobe Steel Ltd. Const. Mach. Div*., 989 F.2d 864, 867 (5th Cir. 1993). A manufacturer is not responsible for accounting for every conceivable foreseeable use of a product. *Delphen v. Dep't of Transp. & Dev*., 94-1261 (La. App. 4 Cir. 5/24/95), 657 So. 2d 328, 333, *writs denied,* 95-2116 (La. 11/17/95), 663 So. 2d 716, and 95-2124 (La. 11/17/95), 663 So. 2d 717.

In *Payne v. Gardner*, 2010-2627 (La. 2/18/11), 56 So. 3d 229, 231, we explained the use of the term "reasonably anticipated use" in the LPLA was intended to narrow the prior law:

> **Notably, this definition is narrower in scope than its pre-LPLA counterpart, "normal use," which included "all reasonably foreseeable uses and misuses of the product**," see *Bloxom v. Bloxom*, 512 So.2d 839, 841 (La.1987)(definition of "normal use"), but, like "normal use," what constitutes a reasonably anticipated use is ascertained from the point of view of the manufacturer at the time of manufacture. *Daigle v. Audi of America, Inc*., 598 So.2d 1304, 1307 (La.App. 3d Cir.), writ denied, 604 So.2d 1306 (La.1992). Unlike its "normal use" counterpart, though, the use of the words "reasonably anticipated" effectively discourages the fact-finder from using hindsight. *Id*.
>
> **"Reasonably anticipated use" also effectively conveys the important message that "the manufacturer is not responsible for accounting for every conceivable foreseeable use" of its product**. *Blanchard v. Midland Risk Ins*., 01–1251, p. 3 (La.App. 3 Cir. 5/8/02), 817 So.2d 458, 460, *writs denied*, 02–1517, 1594 (La.9/20/02), 825 So.2d 1178, 1181; *Dunne v. Wal–Mart Stores, Inc*., 95–2047, p. 4 (La.App. 1 Cir. 9/10/96), 679 So.2d 1034, 1037; *Delphen v. Department of Transp. and Development*, 94–

> 1261 (La.App. 4 Cir. 5/24/95), 657 So.2d 328, 333, writs denied, 95–2116, 2124 (La.11/17/95), 663 So.2d 716, 717. **Likewise, "knowledge of the potential and actual intentional abuse of its product does not create a question of fact on the question of reasonably anticipated use."** *Butz v. Lynch*, 99–1070 (La.App. 1 Cir. 6/23/00), 762 So.2d 1214, 1218, *writ denied*, 00–2660 (La.11/17/00), 774 So.2d 980; see also, *Kelley v. Hanover Ins. Co.*, 98–506 (La.App. 5 Cir. 11/25/98), 722 So.2d 1133, *writ denied*, 98–3168 (La.2/12/99), 738 So.2d 576; *Peterson v. G.H. Bass and Co., Inc*., 97–2834 (La.App. 4 Cir. 5/20/98), *writ denied*, 98–1645 (La.10/16/98), 727 So.2d 441. [emphasis added].

In the instant case, Caterpillar produced undisputed evidence showing that its owner's manual expressly warned users against using chains to tow a disabled machine. Caterpillar further produced evidence showing that it was not aware of any lawsuits, claims, reports, or incidents regarding accidents involving the use of a chain to tow a disabled machine at any time.[3]

This evidence is sufficient to satisfy Caterpillar's burden of showing an absence of factual support for one or more elements essential to plaintiff's claim. Therefore, the burden shifted to plaintiff to produce specific facts showing that there is a genuine issue for trial.

In his opposition to summary judgment, plaintiff took the position that despite the warning, Caterpillar could have reasonably expected users might attempt to tow a disabled machine with chains. Plaintiff relied primarily on an affidavit from his engineering expert, Dr. Ornstein, who opined Caterpillar knew of the danger "because Caterpillar attempted to warn against such use" in its operation manual. Dr. Ornstein also cited his "experience that such use occurs with some regularity in using heavy equipment of all kinds and should reasonably have been anticipated by Caterpillar."

[3] Notably, Caterpillar's corporate representative testified it did not limit its search to the model of bulldozer at issue in this case but reviewed its records for "all track-type tractors." No prior incidents were found despite this expanded search.

Dr. Ornstein's reliance on his own "experience" in support of his opinion that that misuse of the product should have been anticipated is insufficient to refute Caterpillar's affirmative evidence that it received no reports of prior accidents involving use of chains to tow its bulldozers. Moreover, even assuming *arguendo* that such evidence existed, we do not believe it would be sufficient to defeat Caterpillar's motion for summary judgment. The jurisprudence has recognized that knowledge of the potential and actual intentional abuse of a product does not create a question of fact on the question of reasonably anticipated use when the manufacturer expressly warned against the danger of such misuse.[4] *See Payne,* 56 So. 3d 229, 231*; Butz,* 762 So. 2d 1214, 1218; *see also Kampen v. Am. Isuzu Motors, Inc*., 157 F.3d 306, 314 (5th Cir. 1998).

Under these circumstances, we find Caterpillar has demonstrated it is entitled to summary judgment. The ruling of the district court must be reversed.

DECREE

For the reasons assigned, the writ is granted and made peremptory. The judgment of the district court is reversed. Summary judgment is granted in favor of Caterpillar, Inc., dismissing plaintiff's claims against it with prejudice.

[4] Plaintiff also asserts he had no access to the warning in the operator's manual. However, we are not aware of any statutory or jurisprudential requirement which mandates that the user must actually read the warning. To the contrary, courts have found manufacturers are not liable for misuse in violation of an express warning, even if the warning is illegible. *See Eirick v. Southern Elec. Supply Co. of Delaware*, 97-0435 (La. App. 1 Cir. 5/15/98), 753 So. 2d 248, 250, *writ denied*, 98-2197 (La. 11/13/98), 731 So. 2d 260 (holding the manufacturer was entitled to summary judgment even though it was undisputed the warning had been painted over at the time of the accident). This conclusion is consistent with the standard for determining a reasonably anticipated use, which is objective in nature and is to be ascertained from the point of view of the manufacturer at the time of manufacture. *Daigle v. Audi of Am., Inc*., 598 So. 2d 1304, 1307 (La. App. 3rd Cir.), *writ denied*, 604 So. 2d 1306 (La. 1992).