MEMORANDUM

Date: November 15, 2012

Re: Goodson v. Shop

Facts:

On July 25, 2009, Plaintiff, her infant son, her younger brother Titan, and her boyfriend Addison stopped the shop to purchase a climbing harness for Titan and a 25 foot piece of climbing webbing. They spoke with the shop's employee, who recommended a climbing harness and webbing. The employee measured one inch green tubular webbing, manufactured by co-defendant Narricot from a spool on the wall. At one end of the spool was an orange warning indicating that the spool may contain splices. The employee ran the webbing through his hands as he measured it. He missed the splice. He cut the 25 foot piece from the spool with a heat knife and finished the transaction. There was no policy at the shop regarding the inspection of webbing for splices despite the knowledge on the floor that splices may exist. Likewise, there was no warning to the costumer that splices may exist in the webbing.

Plaintiff and her friends and family then drove to a popular climbing spot outside of Aspen, called the Grottos and met up with their friend Richard. Richard had carabineers and a climbing rope. The webbing was taken out of the bag, but not inspected by Richard. To introduce Titan to rappelling, the group stopped at a small rock along the trail. Richard rigged an anchor with the purchased webbing and he and Addison showed Tyson how to rappel. Titan followed without incident. The group then moved to a more difficult area called the Ice Caves. Richard again rigged an anchor using the webbing around a tree. There was no redundancy in the rigging and the knot used was not proper for the activity.

Plaintiff was the first to rappel at the second site. She started to walk backwards towards the edge, she put weight on the webbing and it broke apart at the splice[1] that had been marked with a white piece of tape/label wrapped around the webbing. She fell 25 feet to the rocky floor of the cave and sustained serious injuries to her head, back, wrists, and ribs. She was taken to Aspen Valley Hospital where she was stabilized and transferred to Saint Mary's Hospital in Grand Junction by Flight for Life. She was released after three and a half weeks of hospitalization. She continues to treat with a neurologist for seizures and headaches and is faced with possible additional surgeries on both wrists.

The webbing involved was manufactured by Defendant Narricot for Defendant John, who sold it to Defendant Shop #1, who sold it to Shop #2. Cross-claims against all three co-defendants were filed on behalf of the shop. Addison and Richard were named as responsible non-parties. But, the shop was the main target and all fingers were pointed toward it.

[1] As used in this statement, the term "splice" refers to a cut in the webbing, wherein the 2 ends are held together by tape.

Narricot denied that it had ever had any other incidents involving splices. However, after an exhaustive search, I found evidence that Defendant Narricot's webbing was involved in a fatal climbing accident in 2000. Narricot denied in its discovery responses and in deposition that it was aware of any prior accidents involving splices in webbing. But, nine years prior to the subject incident, in Happy Hour Crag Canyon, Colorado, a young climber fell to his death as a result of spliced webbing marked with tape in the same manner as the webbing at issue in this case. The webbing in that case was sold to the climber by a now defunct climbing store. The store purchased the webbing from a distributor, BlueWater Ropes. I tracked down the president of BlueWater Ropes, Scott Newell and spoke with him. According to Mr. Newell, following the 2000 accident, he requested that all splices in webbing ordered by him from Narricot be marked in a specific manner, and that each spool contain a warning label indicating the number of splices contained within the spool. Narricot implemented his request for only orders for BlueWater.

Take aways:

Given the fact pattern in this case, the severity of the Plaintiff's injuries, the liberal venue of Aspen, and the liability against the shop, this was not a case to take to trial, nor was it one in which a dispositive motion was available to us, given our knowledge of splices in webbing. It was also not a case in which I was willing to let the co-defendants or the non-parties off the hook. I aggressively defended the case through discovery, and fought to keep the other co-defendants in the case. Peter Rietz and I then took the matter, pursuant to Court order, to mediation. In a double team effort, after a full day, we were able to achieve a below policy limits settlement. This settlement was clearly below any expected jury verdict from an Aspen jury. Hence, the aggressive posturing throughout discovery and our posturing in mediation paid off.