

2000

Uinta Pipeline Corporation, a Utah corporation v.
White Superior Company, a corporation, Ken R.
White Company, a corporation, and D. E. Casada,
dba D. E. Casada Construction Company :
Response to Petition for Rehearing

Utah Supreme Court

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BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH
BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

UINTA PIPELINE CORPORATION,
a Utah corporation,

Plaintiff and Respondent,

vs.

Case No.

WHITE SUPERIOR COMPANY, a
corporation, KEN R. WHITE
COMPANY, a corporation, and
D. E. CASADA, dba D. E.
Casada Construction Company,

13950

Defendants and Appellant.

BRIEF IN ANSWER TO
PETITION FOR REHEARING

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Casada Construction Company,

13950

Defendants and Appellant.

BRIEF IN ANSWER TO
PETITION FOR REHEARING

Respondent replies to Appellant's Petition for
Rehearing as follows:

POINT I: THE SUPREME COURT CORRECTLY
REVIEWED THE EVIDENCE AND LAW WITH
RESPECT TO APPELLANT'S LIABILITY.

In its Petition for Rehearing and Brief, Appellant
does not and cannot give any record reference in support
of the statement "that a heavy drain valve, unsupported,
on a nipple, was acceptable in the engineering profession."

(p.2).

But even if such evidence were in the record, there would be at most a disputed issue of fact which the jury resolved against Appellant. Nevertheless, we will respond to Appellant's assertion concerning the evidence.

Appellant relies upon the testimony of Mr. DeBoer concerning Exhibit 56 as evidence that specification of an unsupported valve is an acceptable practice. That photograph depicts three needle valves, which Mr. DeBoer said weigh about one-half pound each, not the thirteen pound plug valve involved in this case. (Tr. 447-448).

Furthermore, the equipment disclosed by the photograph is obviously different in construction and configuration from the suction bottle involved in this case (Exhibits 26-27).

The different design might well have been chosen by the design engineer to preclude destructive vibration and metal fatigue. Thus, the reference to Mr. DeBoer's testimony at pages 437-439 is irrelevant to the case at bar.

Neither does his testimony at pages 460-461 reach the issue. He testified that, in his opinion, the

light drain valves depicted in Exhibit 55 are in accordance with accepted engineering practice.

Respondent's cross-examination of DeBoer, at Tr. 460-461, relied upon by Appellant was not directed to attachment of valves. The questions and answers, beginning at Tr. 459, relate to the difference in cost and safety, if any, between a one-inch heavy valve and a three-quarter inch heavy valve. There is nothing in that testimony concerning the need, or absence of need, to support or anchor a heavy valve. DeBoer's denial that the light needle valves depicted in the photograph (Exhibit 56) were poor design does not support Appellant's argument that an unsupported heavy valve is good design.

Nor was the re-direct examination of DeBoer at Tr. 458-459 directed to the issue now raised. That inquiry compared the efficiency of needle valves with plug valves. After testifying that he knew of no problems with needle valves, DeBoer was asked on re-direct:

Q. Is there any tendency for a needle valve to clog up?

A. Yes.

Q. Is it a good practice to use either a needle valve or a plug valve in engineering--design engineering?

A. Repeat that, please.

Q. Is it good practice to use a plug valve in engineering to suspend it from a nipple?

A. Yes.

Q. And is it good practice also to just put a plug in a bottle and not use a valve in either case? Is that also accepted?

A. That is also accepted, yes.

That line of inquiry does not touch upon the need for braces or other support. The re-direct examination was responsive to DeBoer's testimony on cross-examination concerning size of valve opening in which he testified that plug valves generally have larger orifices than needle valves:

Q. So if you were draining a bottle which was under pressure which contained liquid for the safety of the person draining it you would want a very small opening, would you not?

A. Not necessarily, because small openings plug and they can plug awfully easily, and then the small article can go through them and come out and cause lots of problems. (Tr. 452).

Exhibits 52-53, like Exhibit 56, illustrate installations of lightweight needle valves. None of these show the heavy plug valve involved in this case.

DeBoer's testimony at Tr. 432-433 may be relevant to the issue whether drain valves in general are or are not acceptable. It falls far short of reaching the use of heavy drain valves without support. Because of the obvious differences, the exhibits were offered and received only for illustrative purposes. (Tr. 440,442).

For Appellant and, indeed, for us, to treat Mr. DeBoer's testimony at such length unduly emphasizes its importance. The man is neither a graduate engineer nor a licensed professional engineer. After three years at the University of Colorado, he took employment with the Colorado Highway Department, followed by two or three years with construction companies. He became employed by Stearns-Rogers in 1953 and has worked as a piping designer "off and on for the last 15 years." He belongs to no professional societies. (Tr. 428-429).

Contrast this background with that of Respondent's engineer, Claude W. Underwood, a Graduate Engineer and Registered Petroleum Engineer, who served as senior Petroleum Engineer for Sun Oil Company until his retirement in 1970.

Contrast Mr. DeBoer also with Respondent's witness, William A. Sandras, Plant Supervisor of Chevron Oil Company. (Tr. 315).

Both Underwood and Sandras believed that no valve was necessary on the pulsation bottle because fluids should be accumulated and removed by the preceding fixture, the scrubber. (Tr. 324, 327, 351). They believed the use of any valve created an unnecessary risk and constituted unsafe engineering practice (Tr. 330,342,351). Mr. Sandras pointed out that heavy gauges or valves on suction or discharge bottles fail from vibration fatigue, (Tr. 322), often as early as after two or three days of operation. (Tr. 323).

The point is that, as made by Underwood, if heavy drain valves are used, they must be supported. (Tr. 345). Otherwise, "the unsupported weight supported by the net area at the last engaged thread of the swage, this would concentrate to promote fatigue without any bracing." (Tr. 343).

Actually, Respondent's evidence that a heavy valve should not be suspended by a threaded pipe from a suction bottle subject to vibration is uncontradicted. But even if DeBoer believed such a practice to be permissible, all Appellant can claim from this is a dispute of a fact which was resolved against Appellant by the jury with

obvious good reason in view of the evidence and the relative qualifications of the witnesses.

POINT II. PRE-JUDGMENT INTEREST WAS CORRECTLY AWARDED.

The Petition raises no issue under this point not heretofore raised and met by the decision.

CONCLUSION

The jury verdict was amply supported by the evidence. This court correctly affirmed the Judgment on that verdict after allowing interest. Appellant's Petition for Rehearing should be denied.

Respectfully submitted this 26th day of March, 1976.

WORSLEY, SNOW & CHRISTENSEN

By 

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CERTIFICATE OF MAILING

Copies of the foregoing Answer to Petition for Rehearing were delivered to Mr. Rex J. Hanson, Hanson Wadsworth & Russon, attorneys for appellant, 702 Kearns Building, Salt Lake City, Utah, this _____ day of March, 1976.
