

## MEMORANDUM

TO: John Redeker  
FROM: Tony Damelio  
DATE: July 19, 1999  
RE: Load Insulator / Load Monitor  
Questions from Hugh Pratt

I have reviewed correspondence from Mr. Pratt, dated June 25, 1999, and his attachments which he described expeditiously.

I have also reviewed the questions that he has outlined in his correspondence to you. Let the following serve as a discussion of the questions raised in light of my experience in representing manufacturers and suppliers in various different product liability lawsuits here in Ohio. I am going to speak in very general terms. Whether this discussion is applicable to a specific jurisdiction in which Load Monitor does business, obviously need to be verified.

As you know, product liability laws in various states differ, notwithstanding an effort over the last 25 years to enact a national products liability statute.

It should also be noted that tort reform is in various different stages in the various jurisdictions. In many instances, tort reform deals with issues surrounding product liability. Specifically, there have been various legislative attempts to impose statutes of repose, limits on punitive damages, and statutory caps on compensatory damages. These efforts are variously successful, depending upon the jurisdiction involved. Against that backdrop, let me begin a general discussion.

It is my understanding that Load Monitor Ltd. is manufacturing and offering for sale a device called an Insulated Link which provides a measure of safety for crane load handlers on the ground when that crane comes in contact with or in close proximity of overhead electrical wires. As I understand it, this Insulated Link somehow deflects and/or absorbs current that may run through the crane and ultimately injure the crane load handler, therefore providing a measure of safety to the crane load handler.

I am somewhat familiar with the liability issues that exist in these types of situations, since I represented a landowner in a case where the landowner was sued for personal injury and wrongful death when the operator of a cement boom truck came in contact with an overhead electrical wire and proceeded to electrocute himself and the cement truck operator who was filling the cement boom truck. In that case, we were successful in securing summary judgment on behalf of the landowner because, under Ohio law, a landowner is not responsible for the negligence of a general contractor or subcontractor, provided that the property owner was not actively involved in the alleged activity. In that case, the overhead power lines were open and obvious, everyone knew of their existence, and the boom operator was involved in setting up the various pieces of machinery and told everyone he could deal with the project without coming in contact with the overhead wires. Apparently, he was wrong.

To answer Mr. Pratt's inquiry about who should supply the Load Insulator, it would seem to me at first blush that the manufacturer may have an obligation (though not a duty) to equip cranes with this type of equipment. In that regard, crane manufacturers need to be made aware of the existence of this type of add-on and the specific issue of who should supply the load insulator will probably not be determined, short of some sort of litigation. Once the word gets out into the marketplace that a Load Insulator manufactured by Load Monitor is available, some expert (engineer) is going to opine that this product is available, that it is reasonably foreseeable for a crane operator to come in contact with overhead wires, and therefore someone (perhaps the crane hire firm or the operator of the job) along with the manufacturer, has an obligation to equip a crane with this particular device.

In terms of getting the word out and marketing this device, an ad could be placed in certain trade publications that be received by crane operators, contact with crane operator unions (if there are any), literature to crane repair companies who may confront situations where a load monitor could be recommended, and obviously, crane manufacturers. It seems to me that it is important to penetrate the marketplace and get the information to the ultimate user of the crane and the individual most at risk, the operator and load handler.

As far as inquiries 2 and 3 posed by Mr. Pratt in his correspondence, it seems to me that the operator of a job site would know of the existence of a danger zone. I don't think anyone has to inform the operator of a job site that he is in danger of coming in contact with high voltage wires through the use of a crane. Usually, these high voltage wires are open and obvious and readily discernable. The important information that needs to get out to the operators of job sites and general contractors is the existence of this type of device to protect against the unfortunate incident when a crane may come in contact with an overhead wire.

With regard to inquiry 3, whether there is any duty on a crane rental firm to warn the operator of the site of a change in the state of the art, the question presumes that the crane rental firm is going to know where and under what circumstances the crane will be operated. If a crane rental firm were in a position to know that there is a significantly foreseeable risk that a crane operator may come in contact with overhead power wires, then a duty may be

imposed on that entity. Again, all of these issues outlined by Mr. Pratt in his correspondence dated June 25, 1999, are probably specifically unanswerable under the current state of the law, short of litigation whereby the Load Insulator is a recommended device and/or an expert opines that the Load Insulator should have been used by a crane operator, an operator of a job site, or a crane rental firm and, therefore, the failure to so use a Load Insulator constitutes tortious conduct arising in liability.

Additionally, Mr. Pratt may want to do some research on the internet to determine whether there is a specific group of engineers/experts, who testify in construction cases involving cranes. If there are, this information should be disseminated to those individuals so that when they are writing reports in cases where they are being consulted by plaintiffs and/or their attorneys, the reference to the Load Insulator could be made and, therefore, get the word out into the litigation arena, if you will, of the existence of a safety device that would have prevented an unfortunate electrocution. Those are my thoughts at this time.

Tony

AJD/nkg

...NKG\MEMOS\REDEKER.1