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Mr. Hugh Pratt
Load Monitor, Ltd.
Commercial Road
Bristol BS1 6TG
England

Dear Mr. Pratt:

It was nice to hear from you again. Although I have no ongoing crane/electrocution cases at the moment, I continue to have great interest in that area of law. Needless to say, it is a financially rewarding part of my practice, but beyond that, I believe I make a difference for society by calling attention to hazards and making it too expensive for manufacturers and owners of cranes to continue business as usual without incorporating safety devices in the products.

It is difficult for a lawyer not to digress, so I will return to the point of this letter. You asked a question, which I will paraphrase, as follows: Is a crane manufacturer at peril in the product liability arena for not having installed a safety insulating device on its previously marketed cranes if it now buys and installs such safety devices on its currently produced cranes?

No. The legal doctrine called "subsequent remedial measures" is in place in, I believe, every legal jurisdiction in this country. I will give you an example of that doctrine which is applicable to the subject at hand. If I have a hole in my front yard, a guest at my home walks into the hole in the darkness of the night, and gets hurt, I can be sued. Evidence of my failure to fill in the hole or to warn my guest of its presence is admissible in court against me. I will be found guilty, and I will have to pay for the damages to my guest. However, if the day following the fall into the hole, I had filled it in level with the surrounding ground, the guest could not have introduced my subsequent remedial measure, which I performed for the safety of future guests, into evidence in court. The reason for the doctrine is simple. It promotes a beneficial social purpose. If the guest were able to introduce evidence of my subsequent remedial measure against me, I would not have filled the hole full of sand to prevent someone else's later injury. Thus, the social purpose of the subsequent remedial measure doctrine is to encourage, not discourage, my attending to the safety of others before they, too, are hurt. The doctrine is just as applicable in cases involving cranes and safety devices incorporated in their systems. This doctrine is strongly applied by the courts. As a product liability lawyer, I know that the doctrine is so solidly applied that I

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never attempt to introduce a subsequent remedial measure into evidence in an attempt to show the defendant's prior negligence.

The manufacturer with whom you are communicating should install your apparatus. Its failure to do so, now that it is aware of its availability, can in itself be introduced into evidence in court in all cases from now on. That, coupled with a statement that its failure to incorporate the device out of fear that it would be sued for past failures to install safety devices (if it were so foolish as to try that defense), would be strong evidence in favor of a guilty verdict.

On the other hand, installing the devices on new cranes and sending notification about the availability of a retrofit (for a reasonable charge) to the last known owners of cranes sold in the past would not only cure the manufacturer's liability problems for past, present, and future sales but would also provide a great benefit to the construction industry and its workers. In fact, incorporation of the device in the product should make a powerful statement about the manufacturer's commitment to quality.

It was interesting that you phoned when you did. Just a few days before your call, I was thinking about you because of some work that had been done over the weekend at the office next to mine. When I arrived at the office Monday morning, I saw that some tall palm trees had been installed at the adjacent office. They were only a few feet from the overhead power lines. My immediate question was: Did the crane have a load insulating device? If not, the ground crew were in serious jeopardy.

I hope I have answered your question. Please call if you need clarification or further information.

Very truly yours,



C. Wes Pittman

CWP/lc