

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**AMERICAN CENTRAL INSURANCE )  
COMPANY )**

**Plaintiff )**

**v. )**

**Civil No. 97-CV -214-B-B**

**RYDER TRUCK RENTAL, INC. )**

**and )**

**CYRUS THOMPSON, JR. )**

**and )**

**LANDSTAR RANGER, INC. )**

**Defendants )**

**RECOMMENDED DECISION**

In this diversity action, the plaintiff as subrogee of W.D. & Smith & Sons [“Smith”] alleges negligence against the defendants, Ryder Truck Rental [“Ryder”], Cy Thompson, Jr. [“Thompson”] and Landstar Ranger [“Landstar”], and seeks compensation for damage caused by a fire at the Smith warehouse. Plaintiff alleges that the ignition point of the fire was in the cab of a tractor trailer Thompson purchased from Ryder. Pending before this Court is Thompson’s and Landstar’s Motion for Summary Judgment and Plaintiff 's Response and Defendant Thompson’s and Landstar's Reply.

**Background**

On January 11, 1995 Thompson purchased from Ryder a Freightliner tractor trailer.

Subsequently Thompson leased the tractor trailer to Landstar, but Thompson's employee, Louis Thompson, continued to operate the truck.

Louis Thompson parked the truck inside the Smith warehouse on February 16, 1995. Thompson smokes cigarettes and approximately an hour to an hour and a half before leaving the truck that evening he was smoking in the tractor trailer's cab.<sup>1</sup> Thompson recalls putting the cigarette out on the warehouse floor before leaving the truck that evening. Later that evening a fire ignited inside the truck's cab and spread into the warehouse. The Bangor Fire Department arrived and extinguished the fire. The fire marshall determined that the fire began on the passenger's side of the truck's cab but he did not determine what caused the fire.<sup>2</sup>

A couple of days after the fire Philip Brown, representing the interests of Landstar and its insurance carrier, went to the warehouse to examine the damage caused by the fire. When Brown arrived he discovered that Commercial Union (plaintiff's affiliated company) employed John Mickel, a cause and origin expert, to examine the damage and to determine the cause of the fire. Mickel and Brown met one another and Mickel claims Brown told him not to enter cab's interior. Brown denies ever telling Mickel that he could not enter the truck's cab. Brown maintains that he told Mickel not to conduct destructive testing on the cab because Brown wanted to preserve the cab until Thompson's own cause and origin expert arrived on the scene. Although Brown

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<sup>1</sup> Although Thompson stated in his deposition that he was smoking in the truck's cab an hour to an hour and a half before he left that evening, he apparently told James Eddy, Defendant Thompson's cause-and-origin expert, that he had not been smoking in the truck that evening. Thompson claims that he only lit a cigarette in the cab which in Thompson's view is not smoking a cigarette.

<sup>2</sup> Whether the fire marshal's report contained any other evidence regarding the cause of the fire is unclear because none of the parties discuss the report any further.

denies ever telling Mickel that, no one disputes that Mickel did not enter the cab when he investigated the cause of the fire. Mickel did take about one hundred photographs of the scene and examined the cab's exterior. During the investigation, Mickel noticed that a wire inside the cab appeared to have arced but made no conclusions as to what caused the fire. After Mickel reported the findings of his investigation Commercial Union put the investigation on "hold".

Thompson retained James Eddy, a cause and origin expert, to examine the damage and determine the cause of the fire. Thompson also retained Robert Gavin, a truck mechanical expert, to determine if the truck was mechanically sound at the time of the fire.

On February 24<sup>th</sup> Eddy and Gavin examined the cab and concluded that the fire originated on the passenger's side of the cab. Specifically, Eddy determined that a wire that ran beneath the carpet and eventually to a dome light was the point of ignition. The wire had apparently sparked or arced which ignited the carpet and the clothing on the floor of the cab. Eddy and Gavin believed that the wire that caused the fire was not original to the truck and was improperly installed. Both maintain that the wire should have been installed beneath the sub-floor and not between the carpet and the sub-floor. After completing his investigation Eddy removed the dome bezel and portions of the wire that survived the fire.

Although Eddy determined that a wire ignited the fire, during his deposition he stated that the fire in the cab was consistent with a cigarette being dropped and then clothing being placed on top of the cigarette. Additionally, at the time Eddy made his findings he was told by Lou Thompson that he was not smoking inside the cab prior to the fire that evening.

Defendant Thompson had the cab removed between February 28<sup>th</sup> and March 10<sup>th</sup> to a salvage yard. Defendant Thompson notified the plaintiff that they would be removing the truck

to a salvage yard in Augusta. Once the truck was placed in the salvage yard Defendant Thompson had no control over how quickly the truck was salvaged. On March 18<sup>th</sup> Eddy met with the plaintiff's expert, John Mickel, to explain that he believed an improperly installed wired caused the fire. The plaintiff first notified Ryder of the fire and the possibility of a claim by a letter dated on March 25<sup>th</sup>. Ryder never responded to the letter. The plaintiff filed his Complaint in July 1997.

### *Discussion*

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A "genuine" issue exists if "the evidence on the point is such that a reasonable jury, drawing favorable inferences, could resolve the fact in the manner urged by the nonmoving party." *Smith v. F.W. Morse & Co.*, 76 F.3d 413, 428 (1<sup>st</sup> Cir. 1996). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993).

After reviewing the record, the Court is satisfied that a genuine issue of material fact exists as to whether a wire or a cigarette ignited the fire inside the cab. Thompson argues that the evidence overwhelming supports its theory that a wire, not installed by Defendant Thompson, ignited the fire inside the cab and that therefore the Court should grant its summary judgment

motion. However the plaintiff has elicited testimony from Thompson's expert that the fire pattern in the cab was also consistent with a cigarette causing the fire. The plaintiff has also offered Lou Thompson's testimony to support its assertion that a cigarette may have caused the fire. Lou Thompson stated that he was smoking in the cab about an hour and a half before leaving the truck for the evening. Although Lou Thompson maintains that he did not leave a lit cigarette in the cab the evening of the fire, the plaintiff disputes his assertion and the Court is not in a position to determine the credibility of the witness on a motion for summary judgment. *See, Abraham v. Nagle*, 116 F.3d 111 (1<sup>st</sup> Cir. 1997) (credibility determinations are best left to the trier of fact) The plaintiff has offered sufficient facts to put into question Defendant Thompson's assertion that a wire was only possible ignition source. The Court is satisfied that a reasonable jury could determine, after drawing favorable inferences for the plaintiff, that Lou Thompson dropped a cigarette which later ignited the fire. For the reasons stated above the Court recommends that Thompson's summary judgment motion be DENIED.

### ***Conclusion***

Accordingly, the Court recommends that Defendant Thompson's and Landstar's Motion for Summary Judgment be DENIED.

### **NOTICE**

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de*

*novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu

United States Magistrate Judge

Dated on April 21, 1998.