IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

ERNEST & CORLIN FREE	:	
Plaintiffs	:	
	:	DOCKET NO: 09-02822
vs.	:	
	:	
US SALT, LLC AND INERGY PROPANE, LLC	:	CIVIL ACTION
	:	
Defendants	:	

O P I N I O N

This action arises out of an incident which occurred on August 20, 2008. According to the Complaint, the Plaintiff, Ernest Free, alleges that he fell from his employer's truck on the Defendants' premises. In their Complaint, the Plaintiffs assert that the Defendants were negligent for failing to provide training, trained individuals, safety devices, warnings, or side rails or mechanisms to protect individuals from injuries.

On October 6, 2010 the Defendants filed a Motion for Summary Judgment. The Defendants contend that the Plaintiffs have failed to identify any duty owed by the Defendants to Ernest Free. As the Plaintiff's fall was a result of failure to grasp a handrail while getting off of his employer's truck, the fall was not a result of any duty breached by the Defendants.

The Defendants rely upon the deposition testimony of Mr. Free regarding the nature and circumstances of his fall. During his deposition, the Plaintiff was asked to recount how the fall occurred. The Plaintiff testified that he walked to the rear of his

trailer, and climbed up the ladder to open the hatches on the top of the trailer so that salt could be loaded into the truck. After opening the hatches, the Plaintiff returned to the rear of the trailer and turned to come down the ladder. The Plaintiff's specific testimony regarding his fall was as follows:

> A: When I turned to come down it has handrails. I reached for the handrail and I don't remember a whole lot after that.
>
> (Free Dep. p. 35).

In response, Plaintiffs rely upon Chiricos v. Forest Lakes Council, 571 A.2d 474 (Pa.Super. 1990). In Chiricos, a boyscout master was injured while on the defendants' property. The issue presented was whether the defendant landowner owed a duty to the scoutmaster who was injured while attempting to block the path of a teenager riding an all-terrain vehicle across the defendant's property. The plaintiffs' complaint included a count against the teenage boy for negligence, a count against the boy's parents for negligence and a count against the campgrounds for "failing to secure the campgrounds and to enforce the 'no trespassing' prohibition…" Id. at 475. Although the Superior Court in Chiricos found that the defendant owed no duty of care to the plaintiff, the Plaintiffs' rely upon the Restatement language set forth in Chiricos, which was as follows:

> In evaluating the duty owed by the landowner, the Superior Court held:
>
> As to the efforts ascribed to Forest Lakes in preventing the use of ATVs on its property (hiring one Michael Karkoska as camp ranger and the posting of 'no trespassing' signs) falling below its duty to protect invitees under Sections 343 & 343A of the Restatement (Second) of Torts, we find the argument wanting and do so upon a review of the applicable law, beginning with Sections 343 & 343A of the Restatement (Second) of Torts; to wit:
>
> > Section 343. Dangerous Conditions Known to or Discoverable by Possessor

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
>
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
>
> (c) fails to exercise reasonable care to protect them against the danger.
>
> Section 343A. Known or Obvious Dangers
> (1) A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.
> (2) In determining whether the possessor should anticipate harm from a known or obvious danger, the fact that the invitee is entitled to make use of a public utility, is a factor of importance indicating that the harm should be anticipated.
>
> Id. at 478.

The Plaintiffs argue that the Defendants should have been aware of the obvious dangers posed and attempted to prevent them. In making this argument, however, the Plaintiffs ignore the clear language of the Restatement which provides that a possessor of land is subject to liability for harm caused due to conditions "**on the land**." In the case at bar the Plaintiff fell off of his employer's truck. According to his clear testimony, he fell as a result of failing to grasp the handrail. Chiricos and Restatement 343 do not purport to create a duty for accidents not created by conditions on the land.

Summary Judgment is proper "if after completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the

cause of action or defense which in a jury trial would require the issues to be submitted to a jury." Pa.R.C.P. 1035.2.

Although the Plaintiffs additionally argue the Defendants should be held liable because a neighboring salt facility has employees facilitate in the opening of truck hatches, the Plaintiffs have failed to produce expert testimony in this regard, and the deadline for production of expert reports has passed. As the Plaintiffs have failed to produce evidence of any duty owed by the Defendants which would have prevented Plaintiff, Ernest Free's injury, the Defendants' Motion for Summary Judgment is GRANTED.

O R D E R

AND NOW this 9th day of December, 2010, the Defendants' Motion for Summary Judgment is hereby GRANTED. The Pre-Trial Conference scheduled to take place on December 14, 2010 at 10:00 a.m. is CANCELED and the case shall be removed from the January 2011 trial list.

BY THE COURT,

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Richard A. Gray, J.

cc: David F. Wilk, Esquire
Matthew Zeigler, Esquire
Eileen Dgien, Deputy Court Administrator
Deb Smith, Court Scheduling
Gary Weber