

5th Circ. Backs Coca-Cola Win In Trucker's Slip-And-Fall Suit

By **Collin Krabbe**

Law360 (November 18, 2022, 7:15 PM EST) -- The Fifth Circuit has dismissed a truck driver's premises liability suit against Coca-Cola over his slip and fall at a company facility in Waco, Texas, finding that his "boilerplate" complaint was served too late.

The fall occurred in Aug. 11, 2019, when Stanley Phillips, a driver for Midnight 1 Trucking LLC, arrived at the Coca-Cola facility around midnight to pick up a load of beverages. While walking toward a gate entrance at the facility, "at least one" of Coca-Cola's workers opened and released a water valve, allowing water to flood onto a walkway and causing Phillips to "fall and become severely injured," according to an amended complaint from January.

But in June, the driver's claims were dismissed by the Northern District of Texas, with U.S. District Judge Sam R. Cummings finding that while Phillips's suit was filed shortly before the statute of limitations would have expired, Coca-Cola wasn't served until months later.

The trial judge also dismissed premises liability and negligence claims against defendant Cero's LLC, saying the driver failed to show that the company controlled, owned or operated the facility. Cero's employees worked at a booth where Phillips was required to get out of his vehicle, sign arrival and departure sheets and permit an inspection of his vehicle, his amended complaint said.

Phillips appealed both rulings, but on Wednesday, a three-judge panel from the Fifth Circuit affirmed them. In an **22-10617.0.pdf** >unpublished **opinion**, the panel ruled that COVID-related emergency orders aren't a sufficient excuse for the missed deadlines and that Phillips' complaint was too bare-bones to move forward.

"Beyond mere conclusions, Phillips's complaint does not allege how Cero's possessed Coca-Cola's walkway nor how Cero's employees knew that a Coca-Cola employee released a valve causing the walkway to flood. Phillips therefore failed to sufficiently plead a premises liability claim," says Wednesday's per curiam opinion.

As for negligence, the driver's complaint merely contends "boilerplate" allegations that Cero's broke certain duties, causing Phillips' injuries, the judges' ruling said.

Phillips originally lodged his suit on Aug 10, 2021, just one day before the two-year statute of limitations for the state of Texas expired. But Phillips did not serve Coca-Cola until 90 days after the deadline, on Nov. 9, 2021, the appeals court said.

Phillips argued that the two-year period was extended 81 days by the first and eighth emergency orders on COVID-19 from the Texas Supreme Court. The appeals judges found otherwise, saying that as amended, the orders provide that "any deadline for the filing or service of any civil case that falls on a day between March 13, 2020, and September 1, 2020, is extended until September 15, 2020."

However, because the August 2021 filing and service deadlines for the driver's claims don't fall within the orders' specified March 2020 through September 2020 timeline, the tolling provisions aren't applicable, the appeals judges ruled.

"By failing to offer any other excuse for his untimely service, Phillips fails to meet his burden to show he diligently served Coca-Cola," according to the appeals ruling.

Representatives for Phillips, Coca-Cola and Cero's did not respond to requests for comment on Friday.

Circuit Judges Carl E. Stewart, Stuart Kyle Duncan and Cory T. Wilson sat on the panel for the Fifth Circuit.

Phillips is represented by E. Carlos Tanner III of Tanner & Associates LLC and Volney L. Brand of Brand Law PLLC.

Cero's is represented by Amie P. Fordan and Christian P. Shippee of Touchstone Bernays.

Coca-Cola is represented by Angela S. Gordon and David Estes of Hartline Barger LLP.

The case is Phillips v. Cero's, case number 22-10617, in the U.S. Court of Appeals for the Fifth Circuit.

--Editing by Rich Mills.