SECREST WARDLE

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A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Secrest Wardle Wins Landmark Decision In Michigan Supreme Court Post-*Loweke*

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In a decision of the Michigan Supreme Court, decided August 16, 2012, the Court recognized a limited duty of care owed by appliance delivery persons at a private residence. An appliance installer does not owe the homeowner any duties of care beyond the careful installation of the appliance itself.

In *Hill v Sears Roebuck and Co*., two delivery persons, contracted by Defendant, delivered and installed an electric washer and dryer in the home of Marcy Hill, who had recently moved into the residence. The delivery persons were instructed by Hill's mother where to install the appliances. In doing so, they placed the dryer in front of an uncapped gas line, left there when the prior homeowner removed a gas dryer from the home. The parties all acknowledged that the washer and dryer were installed correctly.

SECREST WARDLE NOTES:

The perception of some attorneys is that the analysis of cases post-*Loweke* routinely results in a finding of a common law duty of care outside the scope of one's contract. The *Hill* case, however, makes clear that the *Fultz* decision remains alive and well. Here, the Supreme Court found that appliance installers were obligated to do no more than fulfill the contract that brought them to Plaintiffs' home. The Court rejected any imposition of common law duties of care on delivery persons to inspect or warn the homeowner of hazards.

Nearly four years later, Ms. Hill inadvertently opened the gas line. She smelled gas, but her attempts to close the line were not completely successful. She did not seek help. Later in the evening, her house exploded when her daughter lit a match indoors. The occupants suffered significant burns.

The Plaintiffs contended through their experts that the training given to the delivery persons should have alerted them to the uncapped gas line and its danger to occupants of the home. Further, they claimed that even though the installers technically fulfilled their contract by installing the appliances successfully, they had an independent common law duty to the homeowners to inspect for other hazards within their expertise, and, separately, "not to make the hazard worse" by blocking from view the uncapped gas line.

In a 4-3 decision, the majority rejected these claims and ordered the trial court to order a dismissal of the case. The installers were present at Plaintiffs' home only by virtue of a contract to deliver electric appliances. They were present once for twelve minutes. They were not safety inspectors. As such, they owed only a *limited* duty of care to Plaintiffs; namely, a duty to carefully fulfill the contract that brought them to the home.

The installers had no "special relationship" with Plaintiffs which would charge them with general duties of care (compare physician/patient, common carrier/passenger, etc.). Michigan has never recognized a fiduciary duty between a delivery person and a customer. As a result, one owes another no duty of care to act at all in the absence of such a legally recognized relationship.

Further, the Court found no new hazard was created by the installers, which would have imposed a common law duty of care. The hazard that existed before the installation of the dryer was exactly the same afterward. Gas permeates the air when it escapes from a gas line and it would have filled the air whether blocked by a dryer or not.

At the core of the Court's analysis are the practical problems that would result by imposing general duties of care in circumstances like this. Where would the law draw the line on the inspection duties owed by delivery personnel? Must they inspect all electrical wires in the home? Must they make sure there are working smoke detectors in place? Fire extinguishers handy and fully charged? As the Court correctly noted, homeowners are the ones best suited to identify and correct potential hazards in their own home. Imposing such a burden on installers would be "onerous and unworkable."

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We welcome your questions and comments.

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