

Index of Appendices

Appendix A: *Chiu v. First Group America*, 295 Or. App. 668, 433 P.3d 787 (2019).

Appendix B: Oregon Supreme Court Order denying Petition for Review on July 3, 2019.

Appendix C: Oregon Supreme Court Order denying Motion for Reconsideration on August 29, 2019.

Appendix D: Respondent, Penske's, Motion for Summary Judgment, filed on October 1, 2015.

Appendix E: Order granting Penske partial summary judgment on Ms. Chiu's claims for products liability, signed by Judge Bushong on September 12, 2016.

Appendix F: Judge Hodson letter, dated March 10, 2017.

APPENDIX A

FILED: January 03, 2019

IN THE COURT OF APPEALS OF THE STATE OF OREGON

VINCA S. CHIU,
Plaintiff-Appellant,

v.

FIRST GROUP AMERICA and TRI MET,
Defendants,

and

PENSKE TRUCK LEASING,
Defendant-Respondent.

Multnomah County Circuit Court
14CV14882

A165410

Jerry B. Hodson, Judge.

Submitted on November 02, 2018.

Before Ortega, Presiding Judge, and Powers, Judge, and Garrett, Judge pro tempore.

Attorney for Appellant: Vinca S. Chiu *pro se*.

Attorney for Respondent: Bruce M. White.

AFFIRMED WITHOUT OPINION

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

No costs allowed.
 Costs allowed, payable by Appellant.

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF OREGON

VINCA S. CHIU,
Plaintiff-Appellant,
Petitioner on Review,

v.

FIRST GROUP AMERICA and TRI MET,
Defendants,

and

PENSKE TRUCK LEASING,
Defendant-Respondent,
Respondent on Review.

Court of Appeals
A165410

S066573

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.

Garrett, J., not participating.

MWB
MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
7/3/2019 9:17 AM

c: Bruce M White
Vinca S Chiu

jr

ORDER DENYING REVIEW

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

Page 1 of 1

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF OREGON

VINCA S. CHIU,
Plaintiff-Appellant,
Petitioner on Review,

v.

FIRST GROUP AMERICA and TRI MET,
Defendants,

and

PENSKE TRUCK LEASING,
Defendant-Respondent,
Respondent on Review.

Court of Appeals
A165410

S066573

ORDER DENYING PETITION FOR RECONSIDERATION

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.

Garrett, J., not participating.


MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
8/29/2019 11:52 AM

c: Bruce M White
Vinca S Chiu

jr

ORDER DENYING PETITION FOR RECONSIDERATION

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

Page 1 of 1

APPENDIX D

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

6 VINCA S. CHIU,

Plaintiff,

FIRST GROUP AMERICA, TRI MET,
PENSKE TRUCK LEASING, et al.

Defendants.

Case No. 14CV14882

**DEFENDANT PENSKE TRUCK
LEASING, INC.'S MOTION FOR
SUMMARY JUDGMENT**

Prayer: \$200,000

Oral Argument Request Information

1. Time required for oral argument: 30 minutes.
2. Official court reporting services are not requested for this hearing.
3. Appearance by telecommunication is not requested.
4. No attorney is more than 25 miles from the courthouse.

INTRODUCTION

18 Vinca Chiu alleges she was an employee of defendant First Group America (hereinafter
19 "FGA") beginning in 2008. It is alleged that Penske maintained FGA vehicles and that FGA was
20 a contractor for defendant TriMet.

21 Plaintiff alleges she sustained multiple injuries/ailments as a result of exposure to
22 "fumes," vapors, chemicals, carcinogens and/or a toxic combination thereof," all while
23 performing work as a lift bus driver over approximately four years of employment.

24 Complaint ¶3

25 Plaintiff" claims the chemical exposures were due to "poorly maintained vehicles and
26 lack of proper safety equipment, filters, seals, or other ventilation devises [sic] to limit or remove

Page 1 - DEFENDANT PENSKE TRUCK LEASING, INC.'S MOTION FOR
SUMMARY JUDGMENT

WHITE & ASSOCIATES
ATTORNEYS AT LAW
1500 S.W. FIRST AVENUE, SUITE 1015
PORTLAND, OREGON 97201-5834
TELEPHONE (503) 221-0612
FAX (503) 221-1675

1 toxic fumes emanating from the engine into the drivers [sic] area and or bus in
2 general." Complaint, ¶7. In sum, she asserts she was "consistently exposed" to toxic materials
3 from the bus she was driving as well as any buses directly in front of hers. Penske allegedly
4 intentionally and/or negligently used "unnecessary and unreasonable procedures to extend the
5 normal and recommended life of the vehicle and to limit costs of repairs regardless of dangers to
6 the drivers."

7 **MOTION**

8 Defendant, Penske Truck Leasing, Inc., (hereinafter "Penske") moves the court for
9 Summary Judgment pursuant to ORCP 47. Plaintiff has not and cannot establish the existence of
10 a material fact on her claims of products liability and negligence against defendant.

11 **POINTS AND AUTHORITIES**

12 This Motion is supported by the discovery exchanged to date, the declarations and
13 exhibits, arguments and statutes cited herein.

14 **ARGUMENT**

15 **I. Defendant Cannot Be Found Liable as a Matter of Law on a Products
16 Liability Claim.**

17 Defendant moves for an Order granting Summary Judgment on plaintiff's ORS 30.900 *et
18 seq.*, claim since Penske does not fall into any category of possible defendants that the statute
19 contemplates. ORS 30.900 to 30.920: "'product liability civil action' means a civil action
20 brought against a manufacturer, distributor, seller or lessor of a product for damages for personal
21 injury, death or property damage arising out of: '(1) Any design, inspection, testing,
22 manufacturing or other defect in a product; (2) Any failure to warn regarding a product; or
23 (3) Any failure to properly instruct in the use of a product.'" Penske does not manufacturer the
24 vehicles at issue in plaintiff's complaint; the vehicles were manufactured by Ford Motor
25 Company. See attached hereto and incorporated herein the Declaration of Kresten Hansen as
26 Exhibit "A". Also, Penske does not distribute, sell or lease out any of the subject vehicles; they

1 are owned by TriMet. Penske merely performs maintenance work on the subject vehicles, just as
2 a mechanic would work on any individual's personal vehicle. Hansen Decl. For these reasons
3 alone, plaintiff's products liability claim fails. To the extent plaintiff's Complaint alleges that
4 the vehicles were "altered, distributed, inspected, modified, tested and/or maintained
5 vehicles," none of these allow for a product liability claim except for distribution, but as noted
6 above, Penske does not distribute vehicles – or anything for that matter.

7 To the extent plaintiff claims that Penske is a distributor because it allegedly alters
8 vehicles in a manner which causes defects, which defendant denies in its entirety, this is a
9 fallacy. As discussed in *Mason v. Mt. St. Joseph, Inc.*, 226 Or App 329, 203 P3d 329 (2009), the
10 rationale for imposing liability on defendants for defects in products is because of the "special
11 responsibility for the safety of the public undertaken by one who enters into the business of
12 supplying human beings with products which may endanger the safety of their persons and
13 property, and the forced reliance upon that undertaking on the part of those who purchase such
14 goods." *Id* at 400 (emphasis added). Penske has not undertaken this responsibility since it does
15 not distribute anything to the public.

16 Plaintiff alleges that Penske had some decision-making capability in terms of
17 "distribution of these defective vehicles," and she asserts that Penske is a "distributor" because
18 of it. In addition to being patently untrue [Hansen Decl.] and nonsensical since even TriMet
19 doesn't "distribute" the vehicles as that term is used in the products liability statute, the Court in
20 *Mason* explained: "We have confined liability under ORS 30.920 to sellers and lessors of
21 defective products and have not included those who are indirectly involved in the distribution of
22 the product as within the statue's ambit." *Id* at 404, citing *Johnston v. Water Sausage Corp.*, 83
23 Or App 637, 733 P2d 59. The Court in *Johnson* explained that the legislature "did not extend the
24 remedy to non-seller distributors of defective products." *Id* at 641. Here, plaintiff has failed to
25 establish, and in fact cannot establish, that Penske is a seller/distributor of these Ford-
26 manufactured vehicles.

Page 3 - DEFENDANT PENSKE TRUCK LEASING, INC.'S MOTION FOR
SUMMARY JUDGMENT

WHITE & ASSOCIATES
ATTORNEYS AT LAW
1500 S.W. FIRST AVENUE, SUITE 1015
PORTLAND, OREGON 97201-5834
TELEPHONE (503) 221-0612
FAX (503) 221-1675

1 Defendant requests an Order from this Court granting summary judgment in its favor as
2 to plaintiff's products liability claim as well as her claim entitled "strict liability." The same law
3 of products as addressed above applies to plaintiff's second claim for relief. Penske cannot be
4 held strictly liable except under a products theory, and plaintiff's products theory cannot be
5 maintained against Penske since Penske is not a distributor of vehicles.

6 **II. Defendant is Not Liable in Negligence as a Matter of Law.**

7 Plaintiff alleges she made complaints to TriMet about "toxic fumes emanating from the
8 vehicles maintained by Penske." The attached Exhibit "B" are the written complaints completed
9 by Chiu. The attached Exhibit "C" are the maintenance records establishing that, in response to
10 plaintiff's complaints, Penske performed tests on the vehicles to ascertain what the complained
11 of issue could be. As the records further establish, there was no defect present in any
12 vehicle. See attached hereto and incorporated herein the Declaration of Steve Strickler as
13 Exhibit "D". Plaintiff has failed to present any evidence to establish that there was anything
14 wrong with any vehicles other than her allegations and, what will be presumed to be, her
15 testimony on the subject. As a matter of law, there is no evidence to present a material issue of
16 fact in this regard other than, potentially, plaintiff's own testimony. For this reason, this court
17 should grant summary judgment as to plaintiff's negligence claims as they all depend on the
18 proposition that there was some "toxic fumes" coming from the vehicles and that Penske
19 somehow caused it. To the extent some exhaust is expelled and breathable by plaintiff, this is
20 not due to Penske; this is a fact of how all vehicles are manufactured. Strickler Decl.

21 Plaintiff's complaint contains numerous allegations of negligence, and without
22 addressing each and every one, Penske has submitted evidence that there was no failure on its
23 part to make the necessary repairs as ordered by TriMet. Also, there is no evidence from
24 plaintiff of any actual issue with the buses that could have caused any injury she complains

25 * * *

26 * * *

Page 4 - DEFENDANT PENSKE TRUCK LEASING, INC.'S MOTION FOR
SUMMARY JUDGMENT

WHITE & ASSOCIATES
ATTORNEYS AT LAW
1500 S.W. FIRST AVENUE, SUITE 1015
PORTLAND, OREGON 97201-5834
TELEPHONE (503) 221-0612
FAX (503) 221-1675

1 of. With regard to plaintiff's allegations that Penske "took unnecessary and unreasonable
2 procedures to extend the normal and recommended life of the vehicles, in order to limit costs of
3 repairs," this is simply untrue and supported by nothing. Plaintiff can present no evidence to
4 make this claim; to the contrary, Penske makes the repairs it is asked to make as well as
5 additional repairs it deems appropriate for the good of the vehicle. Again, TriMet owns the
6 vehicles and decides when to retire them. Penske has no input in that regard. Common sense
7 dictates that Penske's principle aim is to maintain the vehicles at the highest possible quality in
8 order to satisfy and keep its customers. Strickler Decl.

9 Plaintiff has failed to establish, and in fact cannot establish, that there was anything
10 wrong/defective with the subject vehicles; also, there is no question of material fact that when
11 presented with a complaint, Penske investigated whether there was truth to the complaint and
12 found there wasn't.

13 Last, had there been any repair need with respect to the emissions, this would not
14 establish that Penske was negligent; this is not a *res ipsa loquitur* case. Penske has a duty to
15 perform the work it contracted to do, that being the investigation, maintenance and repair of
16 TriMet owned vehicles. The service Penske contracts to perform presupposes, and depends
17 upon, the existence of some issue or problem with the vehicles. Penske cannot be found
18 negligent in its work unless it can be established that it created damage; even a finding that
19 Penske failed to repair damage would not give plaintiff a claim against Penske. She would have
20 a claim against TriMet and, perhaps, TriMet would have a contract claim against Penske.
21 Plaintiff cannot establish that Penske caused any damage to the subject vehicles. Plaintiff's
22 allegations of negligence are faulty in this respect, but more to the point, there is no evidence that
23 Penske was on notice of damage and failed to correct it. There is, likewise, no evidence to
24 establish that in making repairs, Penske did so in any manner which led to further or different
25 damage.

26 * * *

Page 5 - DEFENDANT PENSKE TRUCK LEASING, INC.'S MOTION FOR
SUMMARY JUDGMENT

WHITE & ASSOCIATES
ATTORNEYS AT LAW
1500 S.W. FIRST AVENUE, SUITE 1015
PORTLAND, OREGON 97201-5634
TELEPHONE (503) 221-0612
FAX (503) 221-1675

1 **III. Causation of Injury.**

2 Plaintiff has failed to provide any evidence of injury that can be causally linked to the
3 vehicles she drove. Beyond plaintiff's allegations and anticipated testimony, plaintiff cannot
4 establish (1) there was anything wrong with any TriMet owned vehicles such that emissions were
5 caused to be inhaled, and (2) that Penske somehow caused the condition of the vehicles, and that
6 (3) plaintiff was injured as a result of any alleged problem.

7 Plaintiff has purportedly produced all her medical records. These records establish only
8 that she has complained of numerous conditions, and none has been diagnosed. Plaintiff has a
9 handful of records wherein some treating providers have suggested that her subjective
10 complaints could be caused by emissions she tells them she breathed in. A treating physician
11 taking everything plaintiff says as true, however, does not establish the presence of injury and
12 certainly does not establish causation, most particularly in a case of a complex medical question.
13 Assuming plaintiff's medical records, based on her subjective complaints and mere recitation of
14 allegations against Penske, could be considered some evidence of injury, she nevertheless is
15 unable to produce any evidence showing that a vehicle she drove caused it, and she cannot
16 establish that Penske was negligent in creating a damaged vehicle that somehow caused the
17 alleged injury.

18 **CONCLUSION**

19 For the foregoing reasons, defendant moves for Summary Judgment. Defendant is not a
20 manufacturer, distributor, seller or lessor of the vehicles subject of plaintiff's complaint; she,
21 therefore, may not maintain her products liability claim against defendant. Defendant has
22 established it was not negligent in its maintenance of vehicles. Furthermore, there is no evidence
23 to establish that defendant was negligent in its maintenance such that defendant caused or created
24 * * *

25 * * *

26 * * *



1 damage to the vehicles which resulted in injury to plaintiff. Defendant requests Summary
2 Judgment in its favor and that plaintiff's claims be dismissed with prejudice.

3 DATED this 1st day of October, 2015.

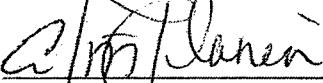
4 **WHITE & ASSOCIATES**

5

6

7

8

By: 

Christie L. Moilanen, OSB No. 081356
Email: cmoilanen@bwhitelaw.com
Of Attorneys for Defendant Penske Truck
Leasing, Inc.

9

TRIAL ATTORNEY: Bruce M. White
OSB No. 763794
Email: bwhite@bwhitelaw.com

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

Page 7 - DEFENDANT PENSKE TRUCK LEASING, INC.'S MOTION FOR
SUMMARY JUDGMENT

WHITE & ASSOCIATES
ATTORNEYS AT LAW
1500 S.W. FIRST AVENUE, SUITE 1015
PORTLAND, OREGON 97201-5834
TELEPHONE (503) 221-0612
FAX (503) 221-1675

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

6 VINCA S. CHIU,

Plaintiff,

Y.

FIRST GROUP AMERICA, TRI MET,
PENSKE TRUCK LEASING, et al.

Defendants.

Case No. 14CV14882

**DECLARATION OF KRESTEN
HANSEN**

Prayer: \$200,000

Kresten Hansen does hereby declare and state:

1. I hold the title of Litigation Claims Examiner with Penske Truck Leasing and

14 have been working for Penske Truck Leasing approximately 22 years.

15 2. Penske Truck Leasing (hereinafter "Penske") rents, leases and maintains vehicles
16 and provides logistic services. In this particular case, Penske only maintains vehicles. Penske
17 does not own the vehicles in question and has never manufactured, altered, or modified the
18 vehicles. Penske does not distribute, sell or lease the vehicles.

19 I hereby declare that the above statement is true to the best of my knowledge and belief,
20 and that I understand it is made for use as evidence in court and is subject to penalty of perjury.

DATED this 30 day of September, 2015.


Kristian Hansen

Page 1 - DECLARATION OF KRESTEN HANSEN

WHITE & ASSOCIATES

ATTORNEYS AT LAW
1500 S W FIRST AVENUE, SUITE 1015
PORTLAND, OREGON 97201-5834
TELEPHONE (503) 221-0612
FAX (503) 221-1675

PAGE - EXHIBIT

**Additional material
from this filing is
available in the
Clerk's Office.**