

# Mississippi Litigation Update

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## MGC Defense Win in Mississippi House Explosion Case

### *Reggie Elliott, et al. v. Tri-State Meter & Regulator Service, Inc., et al.*

In a unanimous decision issued September 3, 2015, the Mississippi Supreme Court ruled that Tri-State Meter & Regulator Service, Inc. is entitled to summary judgment, and reversed the trial court. [See \*Reggie Elliott, et al. v. Tri-State Meter & Regulator Service, Inc., et al.\*](#) MGC's Oxford attorneys [Jay Atkins](#) and [Case Embry](#) represented Tri-State.

Plaintiffs contended that natural gas escaped a gas main in front of their home, migrated through the ground, entered the basement of their home, and caused the home to explode. The explosion caused one death and serious injuries to three other occupants. Total medical expenses, lost earning capacity, and other economic damages exceeded \$3,500,000.00. The potential noneconomic damages claims approached \$4,000,000.00.

Plaintiffs contended they could not smell the natural gas leak due to "odorant fade". Odorant fade is a recognized phenomenon that occurs when odorant, a chemical added to natural gas to give it a "rotten egg" smell, is stripped from the gas during transit or as it migrates through soil from a leak. Plaintiffs asserted that odorant fade is a defect in the odorant, which should be remedied or for which there should be a warning in the utility's Public Awareness Program. Plaintiffs also contended that Defendants should require that natural gas detectors be installed in all homes and buildings near a gas line.

Plaintiffs sued Tri-State, Chevron Chemical Company, the Holly Springs Utility Department, and others after their home exploded. Chevron manufactured the odorant. Tri-State sold odorant to and trained employees of the Utility Department. Tri-State also assisted the Utility Department in performing leak tests of its gas distribution system, and in preparing its Public Awareness Program.

The natural gas defendants asserted that the explosion was caused by propane, not natural gas. Plaintiffs were not natural gas customers. Rather, their home was supplied with propane by Amerigas. Alternatively, even if natural gas caused the explosion, Plaintiffs had no claim under the MS Products Liability Act, because they failed to establish a design defect in the odorant, and the MPLA does not recognize a "by-stander" claim for failure to warn. Tri-State further contended that Plaintiffs' negligence and strict liability claims also fell under the MPLA and should, therefore, be barred.

Plaintiffs settled with the Utility Department. The trial court granted summary judgment to Chevron, but denied summary judgment to Tri-State and Amerigas. Plaintiffs appealed the summary judgment in favor of Chevron. Tri-State filed for interlocutory appeal, which was accepted. Amerigas did not seek to appeal.

The Mississippi Supreme Court affirmed the trial judge as to Chevron and reversed the trial judge as to Tri-State, finding that Plaintiffs' claims against Tri-State should be dismissed. The Court held that the odorant was not defective, because Plaintiffs failed to present a "feasible alternative design". Additionally, the Court held that only "ordinary users and consumers" of a product have standing to sue for a breach of warning under the MPLA (preempting bystander claims under the MPLA for failure to warn). The Court had declined to define "ordinary users and consumers" in two previous cases. Finally, the Court held that all claims arising from an injury caused by a product fall under the MPLA, including the claims against Tri-State for failure to train and failure to prepare an adequate Public Awareness Program.

For questions or more information, please contact one of MGC's [attorneys](#).

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#### **ABOUT THE ATTORNEYS**

Jay Atkins' practice focuses on construction litigation, premises liability, products liability, professional liability and transportation law. He regularly handles large exposure claims, including those related to alleged commercial construction defects, wrongful death and other catastrophic injury claims. Jay routinely presents seminars on legal issues and trial tactics to insurance adjusters, industry representatives and in-house counsel. Find out more about Jay [here](#).

Since he began his professional career, Case Embry has focused his practice in the field of insurance defense litigation, including workers' compensation defense and general liability defense. Case has an active litigation practice, with extensive experience before the Mississippi Workers' Compensation Commission and Mississippi and Tennessee state and federal courts. He routinely advises employers and insurance carriers on legal issues and defense strategies in regards to Mississippi workers' compensation claims. Find out more about Case [here](#).