



PLAINTIFF BUS DRIVER WAS SPRAYED WITH DIESEL FUEL AS SHE ATTEMPTED TO FILL THE TANK OF THE BUS SHE WAS DRIVING; THE MANUFACTURER OF THE GAS PUMP NOZZLE AND THE GAS STATION DEMONSTRATED THE NOZZLE AND THE GAS PUMP WERE WORKING PROPERLY; THERE WAS EVIDENCE OF A RELEVANT DESIGN FLAW IN THE FUEL SYSTEM OF THE BUS; THE NOZZLE MANUFACTURER'S AND THE GAS STATION'S MOTIONS FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED (FOURTH DEPT).

The Fourth Department, reversing Supreme Court, over a dissent, determined that the products liability cause of action against the manufacturer of a gas pump fuel nozzle (Husky), and the premises liability cause of action against the gas station (Kwik Fill) should have been dismissed. The plaintiff was sprayed with diesel fuel as she attempted to fill the tank in the bus (manufactured by Coach) she was driving. There was evidence that the design of the fuel system of the bus may have been the cause:

In opposition to Husky's motion, the Coach defendants submitted the affidavit of an expert and the deposition testimony of the vice president of engineering of defendant Motor Coach Industries, Ltd. The expert opined that the accident was caused by a nozzle malfunction. He did not, however, identify any particular defect in the nozzle, which he did not inspect. We thus conclude that the expert's opinion is based on mere speculation and is insufficient to raise an issue of fact

It is undisputed that the Kwik Fill defendants hired an outside vendor that regularly inspected and serviced their fuel pumps, and, in support of their motion, the Kwik Fill defendants submitted evidence establishing that the vendor determined that the fuel pumps were working properly before and after the accident, thus establishing that the Kwik Fill defendants maintained their property in a reasonably safe condition [Menear v Kwik Fill, 2019 NY Slip Op 05845, Fourth Dept 7-31-19](#)