

***4Front Engineered Solutions, Inc. v. Rosales et al.*, No. 15-0298, 2016 WL 7437658 (Tex. Dec. 23, 2016).**

On December 23, 2016, the Supreme Court of Texas issued an opinion providing further clarification regarding the elements necessary for a plaintiff to prove a negligent entrustment claim. The court's opinion also discussed the "open and obvious" defense to the duty element of a premises liability claim. Ultimately, the court reversed a significant jury verdict obtained at trial and rendered judgment in favor of the defendant.

In this case, 4Front Engineer Solutions, Inc. owned a distribution warehouse and contracted with a licensed electrician to repair a sign on the exterior of the warehouse entrance. The electrician, Francisco Reyes, subcontracted with Carlos Rosales, another electrician, to assist him. 4Front allowed Reyes to use 4Front's stand-up forklift located onsite to perform the work. During the repair effort, Reyes operated the forklift while Rosales stood in the "basket" attached to the lift. On the second morning of the repair, while Rosales was in the basket raised to the sign's height, Reyes drove off the sidewalk's edge, causing the lift to topple over. Rosales fell and suffered severe injuries. Rosales subsequently filed suit against 4Front for negligence, negligence per se, gross negligence, and premises liability.

At trial, a jury found 4Front negligently entrusted the forklift to Reyes and negligently failed to warn about or make safe a dangerous condition on 4Front's premises. Actual damages were awarded totaling roughly \$8,000,000.00 and, additionally, the jury determined 4Front was grossly negligent and awarded \$5,000,000.00 in exemplary damages.

Initially, the Supreme Court of Texas determined 4Front was not liable on Rosales's negligent entrustment claim. In making its decision, the court recognized the negligent entrustment claim at issue required proof that Reyes was an "incompetent or reckless" operator, which was not established where proof of mere negligence was shown. In this sense, the court noted negligent entrustment is somewhat of a misnomer as the cause of action requires proof of more than just ordinary negligence. Evidence offered concerning Reyes's lack of OSHA certification or formal training to use the forklift simply did not rise to the level of "incompetence or recklessness" required to support a negligent entrustment claim because Reyes was not required to possess any such certification or training under Texas law.

With respect to the premises liability claim, the 4Front court pointed out that the only premises conditions on which Rosales's claims could have been based were the conditions of the 4Front sign and the sidewalk off which Reyes drove the forklift. However, no evidence was offered at trial indicating that any condition of the sign was dangerous and/or proximately caused the accident. Furthermore, the court noted that "even if the sidewalk's edge was dangerous and did proximately cause the accident," the condition was "open and obvious" and could not support a finding of liability for the premises liability claim.