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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2006-332

THOMAS J. SMITH
Plaintiff

vs.

CSX TRANSPORTATION, INC.
Defendant and Third Party Plaintiff

vs.

SAVAGE SERVICES CORPORATION and
SAVAGE INDUSTRIES, INC.
Third Party Defendants

**MEMORANDUM OF DECISION AND ORDER RE: CSX TRANSPORTATION
INC'S RENEWED MOTION FOR SUMMARY JUDGMENT**

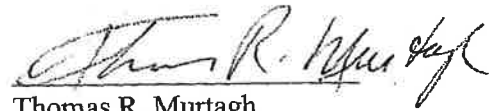
Ordinarily the Court would not entertain such a belated motion, particularly since the Court denied CSX's initial summary judgment request. After discussion with counsel for the parties, however, it appears clear that there are no significant factual issues in dispute between CSX and plaintiff Smith. The disputes appear to be about the implication of terms of express agreements and existence and scope of the legal duty owed to plaintiff by CSX. Before hearing what could be needless and costly days of trial, the Court concludes that it makes sense to determine now whether CSX owed any duty of care to Smith.

The undisputed facts demonstrates that, although CSX was the owner of the railroad yard at the time in question, Savage was the lessee of the area in which Smith was injured with full and exclusive operational control of the transloading activities conducted in that area. Also under the property lease, Savage had the responsibility to maintain the leased premises in a safe condition. Plaintiff has proffered no expert opinion or other source for claiming that CSX had

any obligation to provide fall protection mechanisms for an operation in which CSX did not participate and from which it obtained no direct financial benefit. Smith was present at the premises at the invitation of Savage and any direction given to Smith was by employees of Savage. The entire transloading operation was under the control of Savage. CSX had no role. There is simply no legal foundation for a claim by Smith against CSX and for that reason Summary Judgment must be awarded to CSX.

ORDER

CSX's Renewed Motion for Summary Judgment is ALLOWED.



Thomas R. Murtagh
Justice of the Superior Court

Dated: 5/15/2013