IN THE COURT OF APPEALS OF IOWA

No. 6-251 / 05-1219
Filed November 16, 2006

SALLYANN JUDGE, Administrator of the ESTATE OF EDWARD E. BOLES,
Plaintiff-Appellant,

vs.

BRIAN L. CLARK,
Defendant-Appellee.

Appeal from the Iowa District Court for Clinton County, James E. Kelley, Judge.

SallyAnn Judge, as administrator of the estate of Edward E. Boles, appeals from the district court's order granting Brian L. Clark's motion for directed verdict in a wrongful death suit. **REVERSED AND REMANDED.**

Patrick Woodward of McDonald, Woodward & Ivers, P.C., Davenport, for appellant.

Troy Howell and Rand Wonio of Lane & Waterman, L.L.P., Davenport, for appellee.

Heard by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

Edward E. Boles was killed while cleaning a boiler with explosives at the J.P. Madgett Power Plant in Wisconsin. SallyAnn Judge, as administrator of Edward E. Boles's estate, filed a wrongful death suit against Brian L. Clark, based on co-employee gross negligence. The district court granted Clark's motion for directed verdict, and the estate appealed. Judge contends the district court erred in concluding there was not substantial evidence in the record to support a gross negligence claim against Clark. Judge also maintains the court erred in admitting evidence of a redacted Wisconsin complaint initiating a lawsuit against Dairyland Power Cooperative and testimony regarding the lawsuit. Clark asserts we may affirm the court's ruling on the alternative ground that Wisconsin law applies to the case and Wisconsin does not recognize co-employee gross negligence as a cause of action. We reverse.

I. Background Facts & Proceedings

On August 16, 2001, Boles, an employee of Philip Services/North Central Inc.[1] (Philip), was assigned to clean the boiler at the J.P. Madgett Power Plant in Alma, Wisconsin. Boles was an explosives supervisor. The job he was performing at the power plant at the time of his death was explosive deslagging. Slag is a byproduct of coal burning. It accumulates on pipes and tubes inside boilers, creating a rock-like substance that must be periodically removed to maintain boiler safety and efficiency. Explosive deslagging involves placing explosives next to slag deposits inside the boiler. When the explosives are

[1] Philip Services/North Central, Inc. is an Iowa corporation that provides industrial cleaning in Iowa and surrounding states.

detonated, the force of the explosion dislodges the deposits, allowing them to fall to the bottom of the boiler.[2]

Philip uses three-person crews to perform explosive deslagging. The explosive supervisor, also called the Explosives Technician-1, or ET-1, determines how to place the explosives and when to detonate. The ET-2, or detonation man, handles the detonator and detonates the explosives when ordered to do so by the ET-1. The ET-3 mixes nitromethane and ammonium nitrate into binary explosives[3] as directed by the ET-1, remains with the explosives at all times at a distance of twenty-five feet from the blasting, and provides general labor for the crew.

To discharge the binary explosive, a blasting cap is attached to the charge, which has a lead line running from it. The lead line is a plastic tube filled with a gunpowder-like substance. When the explosive is ready to be detonated, the lead line is attached to a mechanical detonator by inserting the line into one end of the detonator. The detonator is detonated by slamming it with a hand. The shotgun primer inside the detonator then creates a spark that ignites the powder that triggers the blasting cap and the explosive charge.

On August 16, 2001, Boles was the ET-1, Shawn Varner was the ET-2, and Clark was the ET-3 on the crew responsible for deslagging the power plant's

---

[2] Generally, the boilers at power plants are large. One of Philip's employees testified the boiler at the power plant in Alma was eleven to fourteen stories tall, sixty feet wide, and forty feet deep; another employee testified the boiler was nine to ten stories tall and eighty feet wide.

[3] The binary explosives used on the day of Boles's death were one-half pound explosives, and they were the equivalent of one-half pound of dynamite or TNT.

boiler. Boles's crew was performing fish shots.[4] A fish shot is prepared by making a loop at the end of a twelve-foot pole and feeding the explosive through the loop. The ET-1 stands inside the boiler and holds the pole. The ET-1 then extends the pole over the slag deposit, and using the lead line, lowers the explosive down to the slag similar to the manner in which a person fishing lowers a baited hook into the water. While the ET-1 lowers the explosive to the appropriate location in the boiler, the ET-2 holds onto the lead line, which is not yet connected to the detonator. Once the ET-1 has the explosive in position, he or she gives the ET-2 specific commands, and the ET-2 detonates the explosive. Because fans blow air into the boiler, the noise makes verbal communication during fish shots extremely difficult. Thus, the ET-1 and ET-2 develop nonverbal signals for commands.

On August 16, Boles, Varner, and Clark attended several meetings at the power plant to review their jobs and the procedures to follow. At some point, Steven Woodhall, the explosive manager, addressed the entire crew in a "tailgate safety briefing." Following the briefing, Woodhall took Varner and Clark aside to discuss their responsibilities. Woodhall told Clark, "[Y]ou're not touching the detonator today," and "do not play with it, don't mess with it, don't pick it up. Leave it alone, it's not your job." Furthermore, Woodhall told Clark, "You'll have

[4] Boles's crew also performed pole shooting in the boiler. Pole shooting is performed with all the personnel outside the boiler. The ET-3 attaches a blasting cap to the explosive and gives it to the ET-2. The ET-2 assists the ET-1 in securing the explosive to the end of a twelve-foot pole. The ET-1 feeds the pole into the boiler through a three-inch by nine-inch viewport until the explosive is next to the slag deposit. While the ET-1 positions the pole, the ET-2 holds the lead line, which is not attached to the detonator. Once the ET-1 has the explosive properly positioned, the ET-1 commands the ET-2 to detonate the explosive.

a different job assignment, but you don't know enough about the detonator and how to operate it to use it."

After the meetings, Boles, Varner, and Clark moved their equipment to the sixth floor of the boiler and began deslagging. Boles and Varner established nonverbal commands for the fish shots. Once Boles properly positioned the explosive, he would take a ready position by holding the pole under his arm, tucking his chin to his chest, and passing his hand in front of a flashlight beam, making a pumping motion with the hand. When Varner observed Boles's signals, he would sound an air horn twice, sweeping it from inside the boiler to the outside. After sounding the air horn, Varner would check again to make certain Boles was still in his ready position, then connect the lead line to the detonator and detonate the explosive. The three-man crew made a series of pole shots and fish shots without incident and eventually moved to the eighth floor of the boiler.

The eighth floor of the boiler differs from the other floors. The front side of the boiler has viewports, allowing for pole shots, but the back side has three manholes. Between each manhole is a fifteen- to twenty-foot-long soot blower that blows air into the boiler. Through the first and second manholes, a person may enter the boiler into an area called the squirrel cage. The squirrel cage is an area comprised of pipes suspended inside the boiler, and it is approximately six feet wide. Through the third manhole, a person may enter the boiler into an area called the dance floor, which is ten feet wide and thirty feet high.

The crew performed several fish shots on the eighth floor, and as Boles positioned another fish shot, he began to bring the pole back and pull the

explosive back up. Varner observed Boles pull the explosive up and pulled in the slack on the lead line. When the explosive was up, Boles removed it from the loop in the pole. Varner started to pull the explosive out of the squirrel cage, but Boles signaled for him to leave it alone. Boles placed the explosive on a piece of plywood next to him and signaled Varner to enter the dance floor to help move the pole.

Varner tied the lead line onto the boiler next to the manhole and left the detonator, which was not attached to the lead line, in a box next to the manhole. Varner left the manhole, walked around the soot blowers, and entered the dance floor. As he moved to the manhole entering the dance floor, he thought he saw Clark moving supplies from the front side of the boiler to the back side. After Varner entered the dance floor, he took the pole from Boles and repositioned it approximately one to one and one-half feet from where the previous fish shots had been made. Varner fed the pole through the pipes and into the squirrel cage and waited for Boles to grasp it. When he did not feel Boles take the pole, he asked Boles if he had it. Varner saw Boles lift his face shield and say, “Yeah, I got it.” Again, Varner did not feel Boles take the pole, so he asked two more times if Boles had it. Boles replied both times he had the pole, and after the third time, Varner felt Boles take the pole.

As Varner began to exit the boiler, he took six or seven steps and heard a faint air horn sound once. Immediately after hearing the air horn, he saw the flash of the lead line and felt an explosion behind and beside him. Varner exited the boiler and immediately witnessed Clark pulling the spent lead line out of a manhole. Clark told Varner, “Eddie [Boles] isn’t responding, there’s a problem.”

Varner looked into the manhole, saw Boles lying on the floor of the squirrel cage, and sounded the air horn as a distress signal. The explosion killed Boles.

On August 13, 2003, Judge, the administrator of Boles's estate, filed a wrongful death suit against Clark in the Iowa District Court for Clinton County based on co-employee gross negligence. Judge also sued Philip, but voluntarily dismissed the claim on February 25, 2004. Clark filed a motion for summary judgment, contending that because Boles was killed in Wisconsin, Wisconsin law should apply, but even under Iowa law, he was not grossly negligent. The district court denied Clark's motion, and trial commenced on July 5, 2005.

At trial, the estate claimed that while Varner was assisting Boles in moving the pole, Clark intentionally connected the lead line to the detonator and intentionally pushed on the detonator, causing the one-half pound explosive to detonate next to Boles, killing him. Clark testified Varner handed the detonator to him and entered the boiler to watch Boles position the pole. Clark claimed when Varner exited the boiler, he said Boles was ready. Clark maintained he looked into the boiler and yelled, "Are you ready?" three times, and Boles replied, "Yes, I'm ready. I'm ready. I'm ready." Clark contended he sounded the air horn six times, three times in the boiler and three times outside the boiler. Clark later stated he did not look into the boiler before detonating the explosive, and he never had any conversation with Varner or Boles about what the detonation commands were on August 16.

Clark moved for a directed verdict at the close of the plaintiff's case. He argued Wisconsin law applied, but even under Iowa law, the evidence was

insufficient for a reasonable jury to find him grossly negligent.[5] The court denied Clark's motion on the choice of law issue, but granted the motion as to the sufficiency of the evidence. Judge now appeals.

II. Scope & Standards of Review

We review a district court's decision on a motion for directed verdict for the correction of errors at law. *Rife v. D.T. Corner, Inc*., 641 N.W.2d 761, 766 (Iowa 2002). We consider the evidence in the light most favorable to the plaintiff. *Walker v. Mlakar*, 489 N.W.2d 401, 403 (Iowa 1992). If each element of the claim is supported by substantial evidence in the record, we must overrule the order granting the motion. *Rife*, 641 N.W.2d at 767. If no reasonable mind could differ on the issue of the directed verdict, we must affirm the court's ruling in favor of the defendant. *Walker*, 489 N.W.2d at 403.

III. Discussion

Judge contends the district court erred in concluding there was not substantial evidence in the record to support a gross negligence claim against Clark and in granting Clark's motion for directed verdict. Judge also maintains the court erred in admitting evidence of a redacted Wisconsin complaint initiating a lawsuit against Dairyland Power Cooperative and testimony regarding the lawsuit.[6] Clark asserts the district court properly granted his motion for directed

[5] Wisconsin does not recognize co-employee gross negligence as a cause of action.

[6] The Wisconsin lawsuit alleged Dairyland Power Cooperative was liable for the damages suffered by Boles's estate and asserted alternative theories of recovery. The plaintiffs in the Wisconsin suit contended Dairyland was subject to strict liability for damages arising from the performance of an inherently dangerous or ultrahazardous activity on its property. The Wisconsin court found Dairyland strictly liable for the damages suffered by the plaintiffs. The district court in this case, over Judge's objections, allowed Clark to examine Judge about the Wisconsin lawsuit and allowed

verdict on the issue of gross negligence. He also renews his claim that we should affirm the court's ruling on the alternative ground that Wisconsin law applies to this case and Wisconsin does not recognize co-employee gross negligence as a cause of action.

A. Choice of Law Issue

The district court rejected Clark's contention that Wisconsin law should apply to the case because "Iowa law has a strong presumption to protect the safety interests of its workers." Because this issue comes before us on the district court's ruling on Clark's motion for directed verdict, we review the ruling for the correction of errors at law. *Rife*, 641 N.W.2d at 766.

Iowa has abandoned the rule that the law of the place of injury governs every issue in a tort action. *Veasley v. CRST Intern., Inc*., 553 N.W.2d 896, 897 (Iowa 1996). Iowa has adopted choice of law rules formulated in accordance with the Restatement (Second) Conflict of Laws section 145(1) (1971): "[R]ights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties." *Cameron v. Hardisty*, 407 N.W.2d 595, 597 (Iowa 1987). We apply the policy of the state that has the most interest in outcome of the litigation and in the litigants. *Fuerste v. Bemis*, 156 N.W.2d 831, 834 (Iowa 1968). The "most significant relationship" test is stated in the Restatement (Second) Conflict of Laws section 145:

> (2) Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:

Clark to introduce a redacted copy of the Wisconsin complaint, ruling that these were "admissions" by Judge.

> (a) the place where the injury occurred,
> (b) the place where the conduct causing the injury occurred,
> (c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and
> (d) the place where the relationship, if any, between the parties is centered.
>
> These contacts are to be evaluated according to their relative importance with respect to the particular issue.

Wisconsin's only connection to this case is that Boles's death and Clark's conduct allegedly causing the death occurred in Wisconsin. Both Boles and Clark were Iowa residents, and their employer, Philip, is an Iowa corporation with its primary office located in Camanche, Iowa. Furthermore, the Estate of Edward E. Boles is an Iowa estate, and Boles's only heir resides in Iowa. Boles and Clark were only working in Wisconsin for several days on a transitory assignment. We find Iowa has a significant relationship to the parties and an interest in protecting its workers even outside the territorial limits of the state, as illustrated by provisions of Iowa's workers' compensation law.[7] We reject Clark's contention that Wisconsin law should apply to this case.

B. Gross Negligence

Workers' compensation benefits are the exclusive remedy against an employer for acts covered by the Workers' Compensation Act and any other employee of the employer, "provided that such injury . . . is not caused by the other employee's gross negligence amounting to such lack of care as to amount

---

[7] Iowa Code section 85.71 (2001) states:

> If an employee, while working outside the territorial limits of this state, suffers an injury on account of which the employee, or in the event of death, the employee's dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this state, such employee, or in the event of death resulting from such injury, the employee's dependents, shall be entitled to the benefits provided by this chapter . . . .

to wanton neglect for the safety of another." Iowa Code § 85.20(1)-(2) (2001). This statute imposes a substantial burden on a plaintiff suing a co-employee because it requires wanton neglect. *Nelson v. Winnebago Indus., Inc.*, 619 N.W.2d 385, 390 (Iowa 2000). The gross negligence standard was defined in *Thompson v. Bohlken,* 312 N.W.2d 501, 504-05 (Iowa 1981) (citations omitted):

> The term "gross negligence" is said to be nebulous, without a generally-accepted meaning: It implies conduct which, while more culpable than ordinary inadvertence or unattention, differs from ordinary negligence only in degree, not kind. However, the legislature added a new dimension and a certain amount of refinement to the term "gross negligence" in section 85.20 by providing it must "amount to wanton neglect for the safety of another."
>
> Similar to willful or reckless conduct, "wanton" conduct lies somewhere between the mere unreasonable risk of harm in ordinary negligence and intent to harm . . . .
>
> The usual meaning assigned to "willful," "wanton" or "reckless," according to taste as to the word used, is that the actor has intentionally done an act of an unreasonable character in disregard of a risk known to or so obvious that he [or she] must be taken to have been aware of it, and so great as to make it highly probable that harm would follow.

The court in *Thompson* noted that willful behavior must be distinguished from wanton behavior because willfulness is characterized by the intent to injure, whereas wantonness merely implies indifference as to whether the act will injure another. *Id.* at 505. The *Thompson* court also found wanton behavior less blameworthy than willful behavior only because "instead of affirmatively wishing to injure another, the actor is merely willing to do so." *Id.* In order for Judge to establish gross negligence under Iowa Code section 85.20(2), she must prove: (1) Clark knew of the peril to be apprehended; (2) Clark knew that injury was a probable, as opposed to a possible, result of the danger; and (3) Clark consciously failed to avoid the peril. *Nelson*, 619 N.W.2d at 390 (citing

Thompson, 312 N.W.2d at 505). This three-factor test is necessarily stringent because "undesirable consequences could result from improvidently holding a co-employee liable to a fellow employee." *Taylor v. Peck*, 382 N.W.2d 123, 126 (Iowa 1986).

When the district court applied the three-factor test from *Thompson* in ruling on Clark's motion for directed verdict, it found the following:

> In order for Brian Clark to be held grossly negligent, there must be substantial evidence in the record that Brian Clark knew that the explosive charge was next to the person, i.e. the body of Edward E. Boles. There must be substantial evidence that Brian Clark knew that injury was a probable as opposed to a possible result of this danger, i.e. this peril, that is, that the explosive charge was next to Edward E. Boles and, third, that Brian Clark consciously failed to avoid that peril when he consciously detonated the charge next to Edward E. Boles.
>
> Plaintiff's case here fails on the first and third prongs of those requirements of law. There is sufficient evidence in this -- excuse me. There is substantial evidence in this record that Brian Clark should have known of the location of the explosive before detonating the explosive.
>
> There is sufficient evidence that Brian Clark voluntarily detonated that explosive by disobeying orders and requirements of his job, but there is not sufficient evidence that this was a conscious exposure of Edward Boles to the peril of the explosive charge being next to his body at the time of detonation . . . .
>
> There is substantial evidence in the record that Brian Clark was negligent. This negligence was ordinary negligence, which is what the worker's compensation chapter takes care of.
>
> The Court finds it did not rise to the level of gross negligence by the required burden of substantial evidence in the record even when the evidence is considered in the light most favorable to the plaintiff. In this case even the plaintiff admits that the defendant did not know where the explosive was in the boiler, that is, whether it was near Edward Boles or not near Edward Boles.
>
> That is the crucial element which also shows the third element was not there.

Judge contends the district court defined the peril under the first prong of the three-factor test too narrowly when it concluded there must be substantial

evidence in the record "Clark knew that the explosive charge was next to the person, i.e. the body of Edward E. Boles." For the reasons which follow, we conclude this argument has merit.

In ruling on a motion for directed verdict, the district court was required to determine whether the plaintiff presented evidence on each element of the three-factor test. *Kurth v. Van Horn*, 380 N.W.2d 693, 695 (Iowa 1986). A finding of fact is supported by substantial evidence if the finding may reasonably be inferred from the evidence. *Schumacher v. McDonald*, 320 N.W.2d 640, 642 (Iowa Ct. App. 1982). If the evidence was not substantial, a directed verdict was appropriate. *Kurth*, 380 N.W.2d at 695. Under the directed verdict standard, if reasonable minds could differ on an issue in light of the evidence presented, the court must submit the issue to the jury. *Id.* In addition, even when the facts are not in dispute or contradicted, if reasonable minds might draw different inferences from them, a jury question is engendered. *Swanson v. McGraw*, 447 N.W.2d 541, 543 (Iowa 1989). When considering a motion for directed verdict, we consider the evidence in the light most favorable to the party against whom the motion is directed. *Id.*

In *Larson v. Massey-Ferguson, Inc.*, 328 N.W.2d 343, 344 (Iowa Ct. App. 1982), we found substantial evidence supported a trial court's conclusion that a defendant's conduct constituted gross negligence when he knew of the danger associated with an unshielded rotating power take-off shaft on the rear of a tractor that operated the vertical auger of a post-hole digger, yet ordered his crew to "put weight" on the auger to help it penetrate the hard ground. The plaintiff in *Larson* sustained injuries when his jacket caught on the shaft, pulling him into the

turning auger. *Id.* The *Larson* court found the defendant knew his order required the plaintiff to work closely to the unshielded shaft; furthermore, the defendant knew injury was probable because he warned the crew to stay clear of the moving parts of the shaft, yet he ordered the plaintiff to work closely to those parts. *Id.* at 346.

In *Alden v. Genie Industries*, 475 N.W.2d 1, 3 (Iowa 1991), our supreme court reversed a district court's grant of summary judgment in favor of a defendant. The *Alden* court held a jury could find co-employee gross negligence when a supervisor asked another employee to paint light poles using a manlift operated from the bed of a pickup truck so that the employee could not use the outriggers designed for stability. *Id.* at 1. The employee objected to the request on the ground that it was too windy to safely operate the manlift, but the supervisor asked him to finish the job; the manlift collapsed, and the employee suffered fatal injuries. *Id.* at 1-2.

In both *Larson* and *Alden*, the co-employees knew of the perils to be apprehended. The supervisor in *Larson* knew of the danger associated with the unshielded rotating power take-off shaft, and he even warned his crew to stay clear of the moving parts; however, he consciously failed to avoid the known danger when he later ordered his crew to "put weight" on the auger. 328 N.W.2d at 344. The supervisor in *Alden* knew the manlift was dangerous when it was set in the bed of the pickup truck on a windy day without outriggers for stability because his employee complained it was too windy to operate the manlift safely; however, he consciously failed to avoid the known danger when he asked the employee to finish the job despite the danger. 475 N.W.2d at 1.

Like the co-employees in *Larson* and *Alden*, we believe Clark possessed knowledge of the peril to be apprehended. In reaching this conclusion, we define the peril less narrowly than the district court did. In our view, the peril was not "the explosive charge being next to [Boles's] body at the time of detonation." When analyzed under the facts and circumstances of this case, we believe the peril or hazard was the detonation of a high explosive within a confined space in the vicinity of Boles.

Here, the jury heard evidence Clark deliberately primed the explosive to detonate by attaching the lead line to the detonator when he did not know where it was located in the confined space occupied by Boles. There was also evidence Clark ignored strict orders from the explosive manager to refrain from touching the detonator on the day of the accident. Clark admitted he did not look into the boiler before detonation to determine the location of either Boles or the explosive. Clark never discussed the nonverbal detonation commands with Boles or Varner, and he knew it was a violation of basic explosive safety rules to detonate an explosive without knowing where Boles was located. Clearly, Clark had knowledge of the peril to be apprehended.

We further find substantial evidence that Clark knew injury was a probable, as opposed to a possible, result of the danger. Clark testified he knew the explosive would injure or kill Boles if it was detonated near his body. Clark also admitted at trial he knew the explosive guidelines in place were supposed to be followed for the safety of the detonation crew. Nevertheless, he deliberately violated the guidelines by detonating the explosive without ascertaining whether Boles was in a safe position away from the explosive.

Finally, we find Clark consciously failed to avoid the peril. The district court relied on *Walker* to find Clark did not consciously expose Boles to the peril of the explosive being next to his body at the time of detonation. In *Walker*, the supreme court affirmed a district court's directed verdict in favor of defendants. 489 N.W.2d at 408. The *Walker* court held that when the safety engineer and manager of safety, health, and environment at an aluminum plant did not know an unguarded drop-off existed under a mill, and an employee fell into the drop-off and died as a result of the injuries six months later, it was "theoretically and factually impossible for [them] to 'consciously fail to avoid' a peril if [they] did not *actually* know of it." *Id.* at 405.

Here, Clark admitted he did not look into the boiler prior to detonating the explosive, he did not know where Boles and the explosive were located when he detonated the explosive, he did not know the detonation commands, and he violated direct orders not to touch the detonator. Although Clark did sound an air horn at least once prior to detonation and did not know the explosive was next to Boles, we conclude there was substantial evidence he consciously failed to avoid the peril by deliberately flaunting orders not to touch the detonator and by detonating the explosive in violation of established safety procedures.

Viewing the evidence in the light most favorable to Judge, we find there is substantial evidence in the record to prove Clark knew of the peril to be apprehended; knew injury was a probable, as opposed to a possible, result of the danger; and consciously failed to avoid the peril. Accordingly, we conclude the district court erred when it directed a verdict in favor of the defendants.

C. Redacted Complaint

Judge contends the district court erred in allowing the admission of a redacted Wisconsin complaint initiating a lawsuit against Dairyland Power Cooperative and testimony regarding the same. Judge made a motion in limine to preclude the introduction of the Wisconsin complaint, which the district court overruled. When Clark offered the complaint as an exhibit at trial, Judge objected. The court redacted additional parts of the complaint regarding insurance, but admitted the pleading into evidence. We review the district court's evidentiary rulings for abuse of discretion. *Jensen v. Sattler*, 696 N.W.2d 582, 585 (Iowa 2005).

Only admissions of factual matters made in pleadings are admissible as evidence, not mere allegations or statements of legal theories. *Beyer v. Todd*, 601 N.W.2d 35, 41-42 (Iowa 1999). In *Beyer*, the supreme court found a district court did not abuse its discretion in refusing to allow the defendant to introduce the plaintiff's amended petition that included allegations against parties who were subsequently released. *Id.* at 42. The *Beyer* court found the offered statements only amounted to an allegation of negligence, or a legal theory, not an admission by the plaintiff regarding factual matters. *Id.* In the Wisconsin complaint, Judge made allegations of strict liability against Dairyland Power Cooperative. We find this complaint only amounted to an allegation of negligence, not an admission regarding factual matters, and the district court abused its discretion in admitting the pleading into evidence.

IV. Conclusion

We conclude the district court erred in granting Clark's motion for directed verdict, and we reverse the ruling and remand for proceedings consistent with this opinion.

REVERSED AND REMANDED.