

UNITED STATES COURT OF APPEALS **October 18, 2007**

FOR THE TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

TIMOTHY A. TABOR; DEBRA J.
TABOR; FARMERS INSURANCE
GROUP,

Plaintiffs-Appellants,

v.

THE METAL WARE
CORPORATION, a Wisconsin
corporation,

Defendant-Appellee,

and

NESCO AMERICAN HARVEST, a
Minnesota corporation; NEWCO OF
TWO RIVERS, a Wisconsin
corporation,

Defendants.

No. 05-4155 & 05-4156
(D.C. No. 2:99-CV-503-TC)
(Utah)

ORDER AND JUDGMENT*

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Before **KELLY** and **TYMKOVICH**, Circuit Judges, and **EAGAN**,** District Judge.

Appellants Timothy and Debra Tabor and Farmers Insurance Company appeal from an order entered May 20, 2005, granting appellee Metal Ware Corporation summary judgment on products liability claims filed against American Harvest, a company whose assets Metal Ware acquired in 1997. The district court concluded that 1) Utah law would not impose strict liability on successor corporations for defective products sold by the predecessor corporation, and 2) that Utah law would, however, recognize an independent post-sale duty to warn by successor corporations. The court held, as a matter of law, that the Tabors could not establish that Metal Ware's failure to warn caused their damages.

On May 26, 2006, we certified questions of state law to the Utah Supreme Court in this matter. On August 31, 2007, the court responded. *See Tabor v. Metal Ware Corp.*, ___P.3d___, 585 Utah Adv. Rep. 23 (Utah 2007). We have since received supplemental briefs from the parties addressing the impact of the Utah Supreme Court's decision.

Upon consideration of the response to our certified questions and the briefs filed in response to our order dated September 12, 2007, we VACATE the district

**The Honorable Claire V. Eagan, Chief Judge, United States District Court for the Northern District of Oklahoma, sitting by designation.

court's order entered May 20, 2005 and the judgment entered that same day, and REMAND for additional proceedings consistent with the opinion of the Utah Supreme Court. We make no comment on the outcome of those proceedings, and defer to the district court with respect to the appropriate scope of the proceedings. The mandate shall issue forthwith.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge