

Circuit responded, decreeing that its earlier judgment on T&B's appeal was indeed final.

In light of *Tolis*, the Fifth Circuit could not have acted otherwise. Under *Tolis*, a final judgment by a court of appeal is conclusive between the parties, acquiring the authority of a thing adjudged. The Fifth Circuit judgment now complained of by Kaiser–AXA and Hayes correctly interprets and applies *Tolis*. T&B prays that this Court agree and deny the application.

### **Statement of the case**

On July 5, 1999, a massive explosion occurred at the Kaiser plant in Gramercy, Louisiana, when several large vessels became pressurized far beyond their capacity with superheated steam. A jury would eventually find that the primary cause of the explosion (75%) was Kaiser's decades-long neglect of its pressure-relief systems, including Kaiser's unfathomable decision to disable all the pressure-relief valves serving the vessels that exploded. A secondary cause (25%) was a power failure preceding the explosion, caused in small part (5%) by an electrical contractor's misuse of a T&B product.

This massive explosion led to massive litigation: dozens of personal-injury suits by Kaiser employees, business-interruption suits by Kaiser's industrial neighbors, suits by Kaiser itself and its reinsurers (AXA Global Risks U.K. et al.), and several class actions on behalf of people living near the Kaiser plant. Among the many defendants named in these suits were T&B and the electrical contractor who misused T&B's product. These numerous suits were consolidated in the 23rd Judicial District Court.

The T&B product at issue in the litigation was a one-inch square peel-and-stick adhesive mounting base—commonly referred to as a “sticky back”—

used to anchor a nylon electrical-wire tie. Below is a photograph of some exemplars:



Plaintiffs theorized that the root cause of the power failure preceding the explosion was the failure of the sticky backs to adhere to the inside wall of a cabinet containing high-voltage (13.8 kV) bus bars. The allegation against the electrical contractor was that it should have known not to use sticky-backs inside a high-voltage cabinet, because of the possibility that they might come loose over time. The allegation against T&B was failure to warn the electrical contractor of things that, according to plaintiffs, the electrical contractor should have already known.

The trial occurred in the fall of 2001 and lasted six weeks. Before and during trial, numerous settlements occurred, so that by the end of the trial, the only claims left were those of Kaiser, AXA, Kaiser employee Terrence Hayes, and the class-action plaintiffs against T&B and another defendant. The trial ended with a unanimous jury verdict holding T&B blameless for the explosion.

The trial judge signed judgments on the verdict. Rather than appeal, the losing plaintiffs sought relief from the verdict through post-trial motions for JNOV, conditional new trial, and change of venue. On December 16, 2002,