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**\$937,500 GROSS VERDICT – WRONGFUL DEATH – PRODUCTS LIABILITY – UNDER DELAWARE LAW, PLAINTIFF REQUIRED TO PROVE NEGLIGENCE ON THE PART OF DEFENDANT – NO STRICT LIABILITY – DEFECTIVE PALLETIZER – INSUFFICIENT SAFEGUARDING – DECEDENT’S HEAD CRUSHED BY MOVING ARM OF MAIN FRAME.**

*U.S. District Court, Delaware*

**This was an action bought by the estate of the decedent instrument electrician, age 43 at the time of his death allegedly caused by the negligent failure of the defendant manufacturer to equip the subject palletizer machine with necessary safeguarding. The decedent’s head was crushed by a moving arm of the main frame of the palletizer and he was killed instantly.**

The subject accident occurred on Nov. 11, 1987, at the decedent’s place of employment, General Chemical Corporation in Claymont, Delaware. At the time, the decedent was in the process of attempting to determine why the subject machine was malfunctioning. The plaintiff’s employer used this palletizer as a stacking device. Bags of product would come into a hoist-type device which would then shunt the bags over onto the pallet. The pallet would then raise the bags to the next level. The evidence indicated that the machine was activated at the time of the incident and the decedent inadvertently placed himself in an area of danger. The decedent’s head was crushed by the moving arm of the palletizer’s main frame.

The plaintiff’s engineering expert testified that the machine was negligently designed in that lacked appropriate and necessary safeguarding to prevent contact with the moving parts of the machine. Specifically, the plaintiff’s expert offered several alternative safeguards which, in his opinion, would have prevented the subject accident: an electronic eye which would throw out a beam of light and automatically deactivate the machine if an individual or object passed through the light; a contact bar which would serve as a barrier by deactivating the machine if an individual come too close to the moving parts; or an interlock device which would cover the moving parts and deactivate the machine if removed.

The plaintiff’s engineering expert noted that the safeguards he was advocating were present on similar machines and, in fact, were used by co-defendant Mollers, the German parent company on the machines it manufactured in Germany. The defendant Mollers Inc., the American subsidiary, did not provide the same safeguards, according to the evidence offered. The plaintiff’s human factors expert testified that without the safeguards advocated as necessary by the plaintiff’s expert engineer, the subject injury was foreseeable and highly predictable given the particular manner in which the machine is operated.

The defendants maintained that the subject machine was safe and was designed and manufactured in accordance with industry standards. The defendant’s independent engineering expert testified that the subject machine is a multi-functional and as such, requires specific guarding appropriate for its particular use. The defendant’s expert maintained, therefore, that the end-user, in this case the plaintiff’s employer, was in the best position to determine what guarding was required.

The defendant’s evidence indicated that in fact, the plaintiff’s employer’s standard practice was to conduct a safety analysis on all its equipment. After performing a safety analysis on this machine, the employer installed yellow railings around the palletizer’s perimeter. The defendants argued that if the safeguarding present at the time of the subject accident was insufficient, then the defendant employer was responsible.

The defendant additionally maintained that the decedent, who was familiar with the machine and aware of its dangers, was overwhelmingly comparatively negligent in placing himself in dangerously close proximity to the moving parts while the machine was activated.

There was no evidence of conscious pain and suffering as the decedent was killed instantly. He was survived by one adult child and two minor children. The parties stipulated to economic losses in the amount of \$115,000. The jury returned a gross verdict in favor of the plaintiff in the amount of \$937,500, reduced by 25% in accordance with the jury’s assessment of comparative negligence on the part of the decedent. The defendant subsequently filed post-trial motions and the defendant’s motion for Remittitur was granted. The Court, determining that the non-economic damages awarded were excessive, remitted the verdict to \$379,009.50.

REFERENCE

Plaintiff’s expert engineer: Harry Eiermann from N.J. Plaintiff’s human factors expert: Stephen Wilcox from Philadelphia, Pa. Defendant’s expert engineer: Grantges (Jack) Raymus from N.J.

Herbert Garrison, Jr., et al. vs. Mollers North America, Inc. and Mollers Machine fabrik, GMBH, Civil Action no. 89-597; Judge James Latchum, 4-13-93.

Attorney for plaintiff: Peter Patton of Galfand, Berger, et al. in Philadelphia, Pa; Attorney for defendants: Peter Englebardt of Summit, N.J.

Commentary:

The plaintiffs used the deposition testimony of the President of the co-defendant German parent company to their advantage. This witness had testified that similar machinery manufactured by the parent company is equipped with safeguarding such as that advocated as necessary by the plaintiffs. The defendant was apparently unable to successfully reconcile this testimony with its position that such safeguarding was unnecessary and the responsibility of the end-user. The Court’s decision to grant the defendant’s Motion for Remittitur was based upon the determination that the non-economic damages to the plaintiffs was excessive in light of the evidence establishing that the decedent who was divorced at the time of his death, saw his children only on weekends and on holidays.

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