

**\$1,000,000 VERDICT - PRODUCT LIABILITY - DEFECTIVE DESIGN OF INDUSTRIAL SPIRAL WELD MACHINE - DANGEROUSLY SLIPPERY SURFACE ON ELEVATED TABLE - SLIP AND FALL FROM TABLE - STRAIN TO THE MUSCULAR SUPPORT SYSTEM OF THE SACRUM - RADICULOPATHY - DIMINISHED EARNING CAPACITY.**

This product liability action was based on the plaintiff's allegation that an industrial spiral weld machine manufactured by the defendant contained a dangerously slippery elevated platform. The plaintiff, age 48 at the time of the accident, slipped and fell from the platform. He claimed to have sustained injury to the sacrum with radiculopathy into his left leg which limited his earning ability. The defendant argued that the machine was modified by the plaintiff's employer, that the plaintiff assumed the risk of injury by standing on the top of the machine, which was not intended to be stood upon. The defense also contended that the plaintiff sustained only a bruise to the buttock as a result of the fall.

The plaintiff was employed as a machine operator for Pennsylvania Pipe Company located in Camp Hill, Pa. earning \$26,000 per year. His responsibilities included working with the subject spiral weld machine manufactured by the defendant. The machine produced metal pipes ranging in diameter from 10.75" to 72". The forming of the spiral pipes occurred on a portion of the machine known as the forming station, an area supported by two elevated tables approximately four feet above ground level. On January 25, 1993, the plaintiff testified that he climbed onto the forming station and stepped over a 12.75" diameter pipe to check its alignment. As the plaintiff was stepping over the pipe, he slipped and fell, striking his buttocks on the table and then falling onto the floor.

The plaintiff's engineering expert testified that based on the design of the forming station area, the defendant should have anticipated that operators of this equipment would have to climb on the machine and onto the table for one reason or another. This expert opined that there was a risk of injury due to the slippery nature of the surface of the table which was constructed of sheet metal. A design alternative which would have prevented the accident was to use open web grating or some other form of skid resistant traction on the forming station, according to the plaintiff's expert.

The plaintiff's medical expert testified that the plaintiff sustained injury to muscular support system of the sacrum in the fall resulting in intermittent radiating pain into the lower left extremity. The plaintiff claimed that upon his return to work seven months after the accident, he was limited to working only five hours a day. If he exceeded the limitations imposed upon him by his doctor, the plaintiff testified that he would suffer muscle spasms.

The defendant argued that there was no reason for anyone to climb up on the forming station table at any time and that any work which the plaintiff needed to perform could have been done from ground level or from the operator's control station. The defendant contended that the plaintiff misused the equipment and assumed the risk of his injuries by straddling a pipe in production four feet off the ground. The defense introduced evidence that there had been a number of changes made to the machine by the plaintiff's employer after the product was sold. Specifically, the plaintiff's employer removed a weld tracking device that was in the area where the plaintiff was stepping at the time he slipped, arguing that if this device were in place, the accident would not have occurred. Additionally, the defendant pointed out that a support platform located next to

the machine was added by the plaintiff's employer and made access to the forming station easy. The defendant argued that the plaintiff's employer was a sophisticated user of the product and took it upon itself to install the product and train its employees, but did not actually provide any training to the employees at all.

The defendant claimed that at most, the plaintiff suffered a bruise to his buttocks and should have fully recovered within three months of the accident. The defendant pointed out that there was no objective evidence on any medical diagnostic tests (including MRI, x-ray, bone scans, EMG and nerve conduction studies) to show that the plaintiff suffered an injury. The defendant's medical expert testified that the plaintiff displayed classic signs of symptom magnification. The defense also contended that the plaintiff had worked eight hours per day when he first returned to work and that the restriction in the number of hours he could work was self-imposed and not based on any medical condition.

After a five-day trial, the jury found for the plaintiff in the amount of \$1 million. The award included \$238,000 to the plaintiff's wife for loss of consortium.

#### REFERENCE

Plaintiff's engineer: Norman Goldstein from Robbinville, N.J. Plaintiff's rehabilitation specialist: Stuart Hartman from Harrisburg. Plaintiff's vocational economist: Robert Wolf from Cherry Hill, New Jersey. Defendant's orthopedic expert: Walter Peppleman from Harrisburg. Defendant's engineer: Ray Sams from Malvern.

Lehman vs. Pacific Roller & Die Company. Case no. 1:CV-95-0769; Judge Andrew Smyser, 3-8-96.

Attorneys for plaintiff: Richard M. Jurewicz and Arthur L. Bugay of Galfand, Berger, Lurie, Brigham & March in Philadelphia; Attorney for defendant: Charles J. Daly of Rohde, Day & Campbell in Philadelphia.

#### COMMENTARY:

The defense attempted to undermine the plaintiff's injuries by claiming that the only injury he suffered was a bruise to his buttocks. In support of this argument, the defense stressed that three sets of x-rays performed at three different times, three MRI's, a bone scan and nerve conduction studies were all negative. The defense further argued that most of the plaintiff's present problems were due to exaggeration of his symptoms and that the plaintiff displayed classic signs of symptom magnification, thus making the plaintiff's credibility a central issue. By way of cross-examination, defense counsel elicited testimony from the plaintiff that he still engaged in many of the hobbies and interests he enjoyed in prior to the accident. Additionally, the plaintiff admitted that the decision to cut back his work hours was his and not that of his doctor. However, the jury apparently found the plaintiff's decision acceptable in light of testimony that he suffered muscle spasm and pain if he worked beyond five-hours per day and the plaintiff received a significant award for loss of future earnings. On the issue of the plaintiff's credibility, the jury may also have considered that he worked 26 years without a prior back injury or back problem. □