



P E N N S Y L V A N I A

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**\$2,450,000 RECOVERY – PRODUCT LIABILITY –
DEFECTIVE DESIGN OF COMMERCIAL PAPER
SHREDDER – LACK OF INTERLOCKED OUTPUT GUARD
– SHREDDING INJURY TO LEFT HAND – AMPUTATION
OF HAND TO MID-FOREARM.**

Berks County, PA

This product liability action was brought against the manufacturer of a commercial paper shredder, as well as the used equipment dealer which sold the machine, and the recycling center where the plaintiff was working when he was injured by the machine. The plaintiff claimed that the paper shredder was defectively designed and sold without an interlocked output guard. As a result, the plaintiff alleged that his left hand was pulled into the machine and shredded to wrist level requiring a mid-forearm amputation. The defendant manufacturer maintained that the machine was originally designed with a guard which would have prevented the injury, but that the guard was subsequently removed without its knowledge. The co-defendant used equipment dealer argued that it sold the equipment with the guard in place. All defendants contended that the plaintiff assumed the risk of injury by coming to work "high" on marijuana the day of the injury and putting his hand into the back of the machine despite being warned repeatedly not to do so.

The plaintiff was 43 years old and was employed by a temporary employment agency. He was assigned to work at the defendant recycling center and was instructed to shred confidential documents on the industrial paper shredder on site. The paper shredder machine would jam up from time to time. As designed, the equipment would be unjammed by placing it in reverse and then back in the forward position. When placed in reverse an alarm would be activated and a light would illuminate.

On the day of the plaintiff's injury, he and other temporary employees were working on the shredder machine. The machine was jamming up and the plaintiff would go around the back of the machine and pull out balls of shredder documents that were sitting on the discharge end conveyor belt. While the plaintiff was removing batches of shredded paper from the back of the machine, the machine operator turned the machine in reverse, causing the plaintiff's left hand to be pulled into the shredder cutters and shredding his hand to wrist level.

The plaintiff underwent amputation of his left, non-dominant hand to mid-forearm. The plaintiff was cleared to return to work within three months of the accident. He claimed \$196,639 in past medical expenses. The plaintiff alleged that the defendant manufacturer failed to interlock the output guard for the output discharge end of the shredder machine. The plaintiff also claimed that the defendant used equipment dealer failed to sell the shredder machine equipped with the original guard.

The defendant manufacturer argued that as originally designed, the paper shredder machine contained a fixed guard that was bolted onto the discharge end of the machine. It required special tools to remove the guard. The defendant used equipment dealer argued that the guard was in place when it sold the machine. The co-defendant recycling center (where the plaintiff was injured) bought the machine and removed it from the production floor of the selling co-defendant used equipment dealer. The defendant recycling center then reassembled the equipment at its facility. At some unknown point, prior to the plaintiff's injury, the guard was removed and never put back on the machine.

The defendants argued that the plaintiff had been told on at least three occasions on the morning of the accident not to go in the back of the machine nor stick his hand in the back of the shredder.

The defendants also claimed that the plaintiff admitted that he was "high" on marijuana when the injury occurred. The defense asserted that the plaintiff assumed the risk of his injuries by placing his hand into an area he knew would cause him injuries.

The case was settled prior to trial for a total of \$2,450,000.

REFERENCE

Plaintiff's engineering expert: Paul J. Glasgow from Valley Stream, NY. Plaintiff's nursing expert: Valerie Parisi from Doylestown, PA. Plaintiff's physical medicine and rehabilitation expert: Guy Fried from Philadelphia, PA. Plaintiff's psychiatric expert: Eric W. Fine from Philadelphia, PA.

Liebensperger vs. Defendants. Case no. 08-82XX; Judge Jeffrey Schmehl, 03-26-13.

Attorneys for plaintiff: Richard M. Jurewicz of Galfand Berger LLP in Philadelphia, PA, and Thomas Masterson of Lundy Law in Philadelphia, PA.

COMMENTARY

The defendant manufacturer of the commercial paper shredder involved in this product liability/negligence action asserted that the machine was sold with a fixed guard for the output side which would have prevented the plaintiff's injury. However, plaintiff's counsel countered that the parts manual did not list nor describe an output guard and that the manufacturer was unable to produce any pre-shipment photographs or other documentary evidence to substantiate that the machine was, in fact, sold with the guard. These arguments placed the manufacturer in a rather difficult position regarding exactly when and where the guard had been removed. Plaintiff's counsel was also able to extend liability to the manufacturer by arguing that, if the original output conveyor guard was interlocked, then the piece of equipment could not have operated with the guard removed. The plaintiff's strict liability theory regarding the design was simply that the interlock would have insured that the conveyor machine would not run without the guard connected and in place.

The defendants attempted to minimize their exposure and the value of the plaintiff's case by claiming that Berks County is a very conservative venue and that the plaintiff's claim for loss of earning capacity was limited by an erratic, spotty and inconsistent employment history based on a long and chronic history of alcohol and drug abuse. The defense also claimed that the plaintiff was not very sympathetic since he had a history of incarceration that contributed to his inability to hold a job. Finally, the defense stressed the plaintiff's admission that he was "high" on marijuana at the time he stuck his hand in the back of the machine and had been told at least three times before his injury to stay away from the back of the machine.

Despite these potentially damaging factors, plaintiff's counsel achieved a significant \$2,450,000 recovery without the necessity of trial. The defendant manufacturer paid slightly more than half of the settlement funds. The defendant used equipment dealer tendered its policy limits of \$1,000,000.