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Settlement Reached Following Worker's Degloving Injury

Lopes v. FATA Hunter \$800,000 Settlement

An aluminum production factory worker who suffered a degloving and partial amputation of several fingers after his hand was sucked into a paint applicator machine has agreed to settle his claim with the machine's alleged manufacturer and installer for \$800,000.

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Date of Settlement: Nov. 15.

Court and Case No.: C.P. Lancaster No. 13-03995.

Judge: None.

Type of Action: Products liability.

Injuries: Finger amputation and hand, back and arm injuries.

Plaintiffs Counsel: Richard M. Jurewicz, Galfand Berger, Philadelphia.

Defense Counsel: Brett A. Wolfson, Rawle & Henderson, Philadelphia, for FATA Hunter; David S. Cohen, Mintzer, Sarowitz, Zeris, Ledva & Meyers, Philadelphia, for L.K. Comstock & Company Inc.

Plaintiffs Experts: Bartley J. Eckhardt, industrial systems expert, Lancaster, Pa.

Defense Experts: None.

Comment: An aluminum production factory worker who suffered a degloving and partial amputation of several fingers after his hand was sucked into a paint applicator machine has agreed to settle his claim with the machine's alleged manufacturer and installer for \$800,000.

On Dec. 1, 2010, plaintiff Mark Lopes, 43, who worked as a paint line coater prep operator, was using a rag to clean paint from an applicator and pick-up rolls that were part of the prime coater machine when his hand was dragged into the machine's in-running nip point. The in-running nip point was composed of two parallel rollers rotating inward.

The plaintiff's complaint alleges that FATA Hunter Inc. manufactured and sold the machine to the factory in 1972, and it was then installed and assembled by L.K. Comstock & Company Inc.

Lopes sued FATA Hunter and L.K. Comstock, alleging products liability.

According to the complaint, Lopes contended that FATA Hunter failed to properly design, engineer and manufacture the machine because it failed to add proper safety guards for a foreseeable use. Lopes further contended that Comstock failed to properly install the equipment, the complaint said.

The plaintiff contended that since it was foreseeable that the machine would need to be cleaned and would be opened in such a way that the rollers would create an in-running nip point, the defendants should have created a proper safety guard to protect against that potentially dangerous area, the plaintiff's counsel, Richard M. Jurewicz, said. He said he further contended that since the technology had been in use for several decades before the subject machine was built, feasibility would not have been an issue.

The plaintiff's expert planned to opine that similar equipment made some five to 10 years before the subject machine was built provided guards at in-running nip points, and that guards for in-running nip points had been used since before the 1940s.

In their answers, the defendants denied all allegations.

FATA Hunter further denied that it sold or manufactured the machine, and argued that the plaintiff's action was barred because he was a sophisticated user of the machine. FATA Hunter further argued that Lopes' actions were unforeseeable and the superseding cause of any injuries.

FATA Hunter further contended that the machines identified by the plaintiff's expert were materially different than those the plaintiff had used, and therefore the comparison was not accurate, plaintiffs counsel said.

According to the complaint, Lopes suffered a degloving and avulsion injury to his right dominant hand. He also suffered tears of the right labrum and biceps tendon, and lacerations and tears of the flexor tendon and radial carpal ligament. Lopes also suffered a herniated disc at L5-S1, nerve damage, scarring, disfigurement and emotional distress, the complaint said.

Lopes underwent treatments, including leech therapy, to restore blood flow and preserve three fingers; however, the injuries eventually necessitated that his right index, long and small fingers were surgically amputated down to the hand, plaintiffs counsel said.

Lopes has been unable to return to work following the accident, the complaint said.

The defendants argued that Lopes failed to mitigate his damages.

The parties agreed to settle the case, with FATA Hunter contributing \$750,000 of a \$1 million policy from XL Insurance, and Comstock, which is self-insured, covering the remaining \$50,000.

The case was originally filed in Philadelphia County Court of Common Pleas. After the defendants contended that the venue was improper because neither company did any business in Philadelphia, the defendants made a motion to dismiss and the plaintiff agreed to transfer the case to Lancaster County, Jurewicz said.

"It was an eroding policy, so even though it was \$1 million, all the costs, lawyer bills, etc., would be charged against the \$1 million deductible. They figured if it went to a full-blown discovery it will wind us down further and further, and then if we got a larger verdict, there would be a bad-faith claim," said Jurewicz, whose practice specializes in hand injuries. "My objective was to put as much pressure on the carrier to settle it."

— *Max Mitchell, of the Law Weekly*

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