

United States District Court, D. Massachusetts.
BURGOS vs. DANLY MACHINE CORP.
95-30152-MAP

DATE OF VERDICT/SETTLEMENT: February 6, 1997

TOPIC: PRODUCTS LIABILITY - NEGLIGENT DESIGN - INADEQUATE WARNINGS - POWER PRESS ALLEGEDLY LACKS ADEQUATE SAFEGUARDING - PLAINTIFF STRUCK BY BLANK PARTS SHOT OUT FROM PRESS DURING OPERATION - ALLEGED IMPROPER STACKING OF BLANK PARTS BY PLAINTIFF - INJURY TO NON-DOMINANT ARM.

SUMMARY:

Result: Defendant's Verdict

EXPERT WITNESSES:

Plaintiff's: [Richard Montefusco](#) from Springfield, MA;: Plaintiff's expert engineer.

Defendant's: Ralph Daehn, P.E. from Wayne, Ill.: Defendant's expert engineer.

ATTORNEY:

Defendant's: [John B. Stewart](#) of Moriarty, Donoghue & Leja in Springfield, Ma for defendant.

JUDGE: Michael A. Ponser

RANGE AMOUNT: \$0

STATE: Massachusetts

INJURIES:

PRODUCTS LIABILITY - NEGLIGENT DESIGN - INADEQUATE WARNINGS - POWER PRESS ALLEGEDLY LACKS ADEQUATE SAFEGUARDING - PLAINTIFF STRUCK BY BLANK PARTS SHOT OUT FROM PRESS DURING OPERATION - ALLEGED IMPROPER STACKING OF BLANK PARTS BY PLAINTIFF - INJURY TO NON-DOMINANT ARM.

FACTS:

This products liability action arose out of a worksite accident involving a 30-year-old male plaintiff who was operating a 150-ton power press manufactured by the defendant when he was struck by a blank part which shot out from the press during operation, impacting his non-dominant arm and abdomen. The plaintiff alleged that the power press was unsafely designed in that it lacked adequate barrier guarding. The plaintiff additionally alleged that the warnings provided were inadequate to sufficiently alert the user to dangers of stacking the bed of the press with blank parts.

The subject power press was sold to the plaintiff's employer, a Holyoke manufacturer, in 1977. The accident occurred after the plaintiff had stacked double the employer-recommended number of blank parts on the bed of the power press. When the ram of the press descended onto the stack of blank parts, several parts shot out of the press at great force and velocity. One of these parts struck the plaintiff in his left, non-dominant arm and abdomen.

The plaintiff's engineering expert testified that the power press was defective as designed due to the fact that it lacked an interlocking barrier guard between the point of operation and the area where the descending ram meets the press bed where the blank parts were stacked. The plaintiff's expert maintained that the machine should have incorporated a guard which prevented the descent of the ram in the event of improper placement of objects on the bed of the press. The plaintiff's expert additionally maintained that the machine lacked adequate warning labels specifically instructing the operator against stacking blank parts on the press bed.

The defendant manufacturer argued that this was a multi-use press and that the purchaser/employer was responsible for providing adequate guarding depending upon the specific use of the machine. The defendant elicited admissions from the plaintiff's expert that he had worked for a press manufacturer from 1972 to 1973, and that this manufacturer did not supply

(Publication page references are not available for this document.)

barrier guards as standard equipment with its presses. In addition, this expert conceded that no press manufacturer in the country sold power presses equipped with barrier guards as standard equipment in 1977, the year in which this machine was sold by the defendant.

The defendant additionally argued that the warnings against stacking any objects on the bed of the press were clearly delineated in the operator's manual attached to the press at the time of the accident. The defendant additionally maintained that the warning labels it affixed to the machine were adequate, warning about the dangers of the descending ram and to read the manual before operating the press. The defendant elicited admissions from the plaintiff that he had never read the on-machine warnings. The plaintiff sustained wounds to his left arm and abdomen when struck by the blank part thrown by the press. The plaintiff was left with a 10% loss of function of the non-dominant arm, as well as permanent scarring and damage to the nerves in his left arm. The plaintiff claimed approximately \$16,000 in medical specials and \$19,000 in lost wages. The plaintiff was out on disability for 16 months following the accident. He additionally claimed lost earning capacity attributable to the permanent impairment sustained.

The jury found that the warnings provided by the defendant manufacturer were inadequate, but also found that the lack of adequate warnings was not causally related to the plaintiff's accident. The jury additionally found that the press was safe as designed. Accordingly, a verdict for the defendant was entered.

COMMENTARY:

Counsel for defendant reports that there were several interesting rulings, both in the pre-trial phase and prior to the verdict. The Court allowed the defendant's motion to strike the workers' compensation lien (in excess of \$50,000) after the comp carrier repeatedly refused to cooperate with discovery and violated a court order. The comp carrier then hired counsel, but this party's request for reconsideration was denied, based upon the determination that it still had not produced wrongfully-withheld materials. Questions of the admissibility of the plaintiff's prior criminal record became an issue in the case. The defendant attempted to introduce several convictions on the issue of credibility. The Court ruled that the plaintiff's recent misdemeanor shoplifting conviction was not admissible as it did not constitute a crime involving dishonesty under [Fed. R. Evid 609](#), in accordance with the opinions of the 9th and 5th circuits. The Court did, however, allow the jury to hear evidence of two 1990 drug dealing convictions notwithstanding their prejudice to the plaintiff, in accordance with

Green vs. Bock Laundry, (U.S. 1989). It is felt that this evidence reflected negatively on the plaintiff, making him less than sympathetic in this case in which his own mistake had arguably contributed to his injury. Over the plaintiff's objection, the defendant had also admitted in evidence a demand letter written by another lawyer on plaintiff's behalf to an insurance company. Through this demand letter, the plaintiff was seeking benefits for lost wages (arising out of a pedestrian accident) during the same period as he was seeking lost wages in this case. The defendant's position was that stacking any parts on the press was an inappropriate work practice and that this was so obvious that no warning against such was necessary. The jury found, however, that the warning provided was inadequate, but that the lack of adequate warning was not the proximate cause of the plaintiff's injury.

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