

PENNSYLVANIA

HARRISBURG COUNTY

PRODUCTS LIABILITY

Design Defect — Industrial Machinery — Successor Liability — OSHA

Butcher's arm was fractured in incident with used machinery

MEDIATED

SETTLEMENT \$510,000

CASE Mario Gonzalez and Lisa Gonzales v. Angelus Sanitary Canning Machine Company, Hema Technologies, S.A., Northbrook Engineering and Sales, Sidel, Inc. formerly d/b/a Hema USA, Inc. formerly d/b/a Hema, USA, Inc., The J. Doe Company, a fictitious name and Alard Equipment Corporation v. third-party-defendant ACC Meat Canning Company, LLC d/b/a ACC Meat Canning Co., ACC Company and ACC Meat Canning Co., LLC, No. 1:09-cv-01455-CCC

COURT U.S. District Court, Middle District of Pennsylvania, Harrisburg

JUDGE Christopher C. Conner

NEUTRAL(S) Thomas A. Wallitsch

DATE 5/18/2011

PLAINTIFF

ATTORNEY(S) Richard M. Jurewicz, Galfand Berger, LLP, Philadelphia, PA

DEFENSE

ATTORNEY(S) Edward J. Cermanski, Law Offices of Ralph F. Touch, Reading, PA (Alard Equipment Corporation)
 Richard B. Druby, Nestico, Druby & Hildabrand, P.C., Hershey, PA (ACC Meat Canning Company, LLC)
 Mark E. Gebauer, Eckert Seamans Cherin & Mellott, LLC, Harrisburg, PA (Northbrook Engineering and Sales)
 Mark A. Johnston, Eckert Seamans Cherin & Mellott, LLC, Washington, DC (Northbrook Engineering and Sales)

Edward J. Longosz, II, Eckert Seamans Cherin & Mellott, LLC, Washington, DC (Northbrook Engineering and Sales)
 Charles S. Marion, Pepper Hamilton, LLP, Harrisburg, PA (Hema Technologies, S.A.)
 Timothy J. McMahon, Marshall, Dennehey, Warner, Coleman & Goggin, P.C., Harrisburg, PA (Angelus Sanitary Canning Machine Company)
 Christopher M. Reeser, Marshall, Dennehey, Warner, Coleman & Goggin, P.C., Harrisburg, PA (Angelus Sanitary Canning Machine Company)
 Justin G. Weber, Pepper Hamilton, LLP, Harrisburg, PA (Hema Technologies, S.A., Sidel, Inc.)

FACTS & ALLEGATIONS On Dec. 15, 2008, plaintiff Mario Gonzalez, a 33-year-old butcher, was seriously injured while working at Brother & Sister Food Service, in Harrisburg. Gonzales was standing between the filling and canning machine, loading stacks of lids into it, when Gonzalez's supervisor asked him to hand over a tool, and Gonzalez reached over and between the two machines. At that point, his jacket got caught on the rotating power take-off shaft, resulting in multiple fractures to his right arm.

Approximately a year before the accident, the principal owners of Brother & Sister had ownership interest in another company known as ACC Canning Machine, Inc., which was interested in purchasing a pre-owned integrated filling and canning machine and had contacted Northbrook Engineering, a broker of pre-owned food processing equipment. Through another broker, Alard Equipment Company, Northbrook located a used canning and filling machine that was owned by a company (that was unidentified for reasons of confidentiality).

Gonzalez sued all of the entities involved in the manufacture and sale of the can filler machine for product liability on a theory of design defect.

Plaintiff's counsel alleged the failure of the machine's manufacturer, Hema Technologies S.A., to provide an interlock for the power take-off shaft guard. Also, counsel alleged that the unidentified manufacturer failed to make sure the power take-off shaft guard was with the machine when the equipment was resold to the plaintiff's employer. Counsel further alleged that when Sidel Inc., Hema's distributor, provided after-market customer support to the plaintiff's employer, that company failed to warn that the machine was missing its power take-off shaft guard.

Prior to the sale of the equipment to the plaintiff's employer, the equipment had been decommissioned by the unidentified manufacturer and was partially disassembled. The unidentified firm had originally purchased the equipment from Hema in 1996. The original Hema filling machine was designed by Hema to be integrated with an Angelus canning machine; the shafts of both shared a power take-off shaft as a common power source. The shaft was designed and manufactured with a four-sided fixed guard that completely covered all sides of the shaft. Special tools were required to remove the guard for the shaft, which had been done only twice in the 10 years that IAMS used the equipment.

The defendants argued that the Hema filler machine was originally provided with a fixed guard for the power take-off shaft, which complied with industry standards. The defendants emphasized that the shaft guard could only be removed by trained and authorized personnel with special tools and the parts manual that accompanied the resale of the equipment to the plaintiff's employer contained a drawing depicting the power take-off shaft guard. There was also evidence that an electrical contractor (consulted by the plaintiff's employer to assist in setting up the Hema filler machine) had warned that the equipment was dangerous without a power take-off shaft guard.

The defendants also contended that plaintiff's employer bought the equipment in "as is" condition, with no assurance that the machine would even operate. All defendants contended that the Hema machine was sold to the plaintiff's employer with all of its parts, including the power take-off shaft guard and that the plaintiff's employer lost, misplaced or failed to install the power take-off shaft guard prior to the accident.

Given that the power take-off shaft guard was missing on the date of the accident, the defendants noted that it was the plaintiff's employer's responsibility under OSHA regulations to ensure that the equipment was properly safeguarded.

INJURIES/DAMAGES *anxiety; depression; emotional distress; fracture, arm; open reduction; post-traumatic stress disorder*

The plaintiff suffered multiple fractures of his right arm that required open reduction surgery to repair. He had past medical expenses of \$98,411.92 and a wage loss claim of \$21,567.18.

The plaintiff also claimed psychological and emotional damages, asserting that he suffered from post-traumatic stress disorder (PTSD) and was anxious and depressed as a result of the accident.

The plaintiff's wife joined in the action, asserting a per quod loss of consortium claim.

The defendants did not dispute the extent or severity of the plaintiff's injuries but argued that, by the plaintiff's physician's own admissions, all of the plaintiff's fractures had healed and that he missed only four months of work. As for the emotional injuries claimed by the plaintiff, the defendants disputed the contention that he had PTSD and argued that he had predisposed personality traits that were responsible for his anxiety and depressive mood.

RESULT The case settled for \$510,000 two weeks after mediation with retired Judge Thomas A. Wallitsch. The amount contributed by each defendant was confidential.

PLAINTIFF

EXPERT(S)

April D. Armstrong, M.D., orthopedic surgery, Hershey, PA

Charles M. Davis, M.D., orthopedic surgery, Hershey, PA

Bart Eckhardt, P.E., mechanical, Lancaster, PA

Timothy S. Johnson, M.D., plastic surgery/reconstructive surgery, Hershey, PA

John Risser, M.A., vocational assessment, Elizabethtown, PA

Arnold T. Shienbold, Ph.D., clinical psychology, Harrisburg, PA

DEFENSE

EXPERT(S)

Stephen W. Dailey, M.D., orthopedic surgery, Harrisburg, PA

William H. Daly, P.E., mechanical, Chesapeake, MD

Irene C. Mendelsohn, vocational rehabilitation/counseling, Penn Valley, PA

Timothy J. Michals, M.D., psychiatry, Philadelphia, PA

Frank Schwalje, P.E., mechanical, Edison, NJ

EDITOR'S NOTE This report is based on court records and information that was provided by counsel for the plaintiff and the unidentified manufacturer. Counsel for the remaining defendants declined to comment.

—Jon Steiger

Plaintiff Expert: Bartley J. Eckhardt, P.E., President/CEO

Robson Forensic
Engineers, Architects, Scientists & Fire Investigators