

CALIFORNIA

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LOS ANGELES COUNTY

PREMISES LIABILITY

Dangerous Condition

Furnace Temperature Raised, Pipefitter Burned

FEATURED VERDICT

Premises Liability

Furnace Temperature Raised, Pipefitter Burned

\$1,500,000
McGhee v. Owens

 Superior Court of
Los Angeles County

Plaintiff Counsel John F. Denove, heong, Denove,
Rowell, Antablin & Bennett; Los Angeles, CA

Defense Counsel Christopher J. Bagnaschi, Yoka &
Smith; Los Angeles, CA

Full report on page 6

SETTLEMENT **\$1,500,000**
CASE John McGhee v. Owens-Brockway Glass Container,
No. VC028372

COURT Superior Court of Los Angeles County,
Los Angeles, CA

JUDGE Daniel S. Pratt

DATE 2/20/2003

PLAINTIFF
ATTORNEY(S) John F. Denove, Cheong, Denove, Rowell, Antablin & Bennett;
Los Angeles, CA
Brian Kesluk, Law Offices of Brian Kesluk; Los Angeles, CA

DEFENSE
ATTORNEY(S) Christopher J. Bagnaschi, Yoka & Smith; Los Angeles, CA

FACTS & ALLEGATIONS Defendant Owens-Brockway Glass Container Inc. (Owens), the largest manufacturer of glass beverage containers in the United States, contracted with plaintiff's employer, Lilja Corporation (Lilja) to perform an overhaul on one of its furnaces. Each furnace is comprised of several parts: the "melter", where the raw batch of glass is melted, a transitional area called the "throat" and the "refiner" where the glass is formed. During normal operation, the temperature in the melter is maintained at 2,700 degrees. Typically, a glass manufacturer shuts down the entire furnace during an overhaul. Since this procedure costs the manufacturer hundreds of thousands of dollars per day, most manufacturers order what the defendant ordered, a "refiner only overhaul" thereby reducing the number of furnace "down days".

In order to perform a "refiner only overhaul," the refiner and throat are cooled to ambient air temperature through the use of direct external water, cooling fans and

water jackets wrapped around the throat. The overhaul that Owens ordered was scheduled to last several weeks. Though Lilja controlled all of the details of the overhaul, Owens retained total control of the temperature of the furnace throughout the duration of the overhaul.

Lilja hired the plaintiff, John McGhee, a 57-year-old diabetic journeyman pipefitter, to work on the overhaul. On December 24, 1997, unknown to McGhee, Owens removed the cooling jacket, the water hose and cooling fans, to allow the temperature of the throat to go back up to its normal temperatures, prematurely anticipating the completion of the overhaul. That day, McGhee worked approximately 10 hours, spending the better part of the day standing on and off the throat in order to replace burners in the refiner. The inside temperature in the throat that day was raised to approximately 2000 degrees. When McGhee went home after work and removed his work boots, he discovered that the soles of his feet had been seriously burned.

McGhee contended that Owens retained exclusive control of the temperature, did not warn him that the temperature was to be raised and did not tell him to either get off of the throat or to stand on insulation boards or blankets. Because the ambient temperature in which he was required to work was approximately 120 degrees, McGhee argued that the increasing temperature of the throat was difficult for him to recognize.

Owens responded that it hired Lilja because it was the most experienced subcontractor in glass refinery overhauls. It said that Lilja agreed to retain absolute control over the safety and manner of the overhaul and was, therefore, responsible for instructing their employees on safety and providing safety equipment such as wooden heat-proof shoes, insulation boards and blankets. Owens further contended that it had advised Lilja that the temperature was to be raised. Defendant contended that if anyone were liable, it was Lilja, the plaintiff's employer and the plaintiff himself.

INJURIES/DAMAGES *foot; second-degree burns; third-degree burns*

McGhee suffered second and third degree burns of the plantar surfaces of both feet requiring skin grafting and multiple debridements.

He alleged past medicals of \$186,000, past lost earnings of \$110,000 and future lost earnings of \$200,000.

Owens noted that the plaintiff was diabetic, suffered peripheral neuropathy and, therefore, did not feel the increase in temperature. It argued that the plaintiff withheld this information from Lilja and that had he been forthright, he would never have been allowed to work on this job.

RESULT \$1,500,000 gross award (economic \$500,000; non-economic \$1,000,000). Reduced to \$900,000 net for plaintiff's employers negligence and offsets.

DEMAND \$299,000 (withdrawn).

OFFER \$150,001 (withdrawn)

TRIAL DETAILS Trial Length: 7 days
Trial Deliberations: 2 days

PLAINTIFF

EXPERT(S) Ronald Schaible, employee safety; Lancaster, PA
Tamara Hunt, Ph.D., economics;
Santa Ana, CA
Alexander M. Majidian, M.D., oculoplastic surgery; Sherman Oaks, CA

DEFENSE

EXPERT(S) John Gawlas, glass polymers; Indio, CA
Juben Merati, economics; Los Angeles, CA
Richard D. Hornichter M.D., internal medicine; Los Angeles, CA

INSURER(S) Liberty Mutual Fire Insurance Co.

—Sidney Bernstein

Plaintiff Expert:

Ronald D. Schaible, CIH, CSP, Workplace Safety

Robson Forensic

Engineers, Architects, Scientists & Fire Investigators