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BITTING vs. PECO, ET AL.
9502-2342

DATE OF VERDICT/SETTLEMENT: June, 1998

TOPIC: 40% COMPARATIVE NEGLIGENCE FOUND - REMOVAL OF SWITCH-GEAR LOCK SAFETY DEVICE - RESTORATION OF ELECTRICITY TO MODIFIED EQUIPMENT - PLAINTIFF HIT WITH 13,200 VOLTS OF ELECTRICITY - EXTENSIVE BURN INJURIES - NERVE DAMAGE - SHORT TERM MEMORY LOSS

SUMMARY:

Result: \$2,375,000 Gross Verdict

EXPERT WITNESSES:

Plaintiff's: [Walter S. Farley, Jr.](#) of Fairless Hills.: Plaintiff's engineer.

Frederick A. DeClemont from Philadelphia.: Plaintiff's burn specialist.

[Rosette C. Plotkin](#) from Philadelphia.: Plaintiff's neuropsychologist.

[Arthur S. Brown](#) from Camden, N.J.: Plaintiff's plastic surgeon.

James F. Bonner from Philadelphia.; Plaintiff's physical medicine and rehabilitation expert.

[Philip Spergel](#) from Jenkintown.: Plaintiff's vocational rehabilitation expert.

ATTORNEY:

Plaintiff's:, III of Sheller, Ludwig & Badey in Philadelphia; Attorney for defendant PECO.

Defendant's: [Conrad O. Kattner](#) of PECO Energy Company in Philadelphia for defendant PECO.

[John P. Penders](#) of Marshall, Dennehey, Warner, Coleman & Goggin in Philadelphia for defendant Hygrade Food Products.

[Francis J. Deasey](#) and [Jane G. O'Donnell](#) of Deasey, Mahoney & Bender in Philadelphia for defendant electric equipment assembler (Penn Panel & Box Company).

[Edward C. German](#) of German, Gallagher & Murtaugh in Philadelphia for defendant switch gear designer/manufacturer Kearney National, Inc..

JUDGE: [Mark I. Bernstein](#)

RANGE AMOUNT: \$2,000,000-4,999,999

STATE: Pennsylvania

COUNTY: Philadelphia County

INJURIES:

40% COMPARATIVE NEGLIGENCE FOUND - REMOVAL OF SWITCH-GEAR LOCK SAFETY DEVICE - RESTORATION OF ELECTRICITY TO MODIFIED EQUIPMENT - PLAINTIFF HIT WITH 13,200 VOLTS OF ELECTRICITY - EXTENSIVE BURN INJURIES - NERVE DAMAGE - SHORT TERM MEMORY LOSS

FACTS:

This action stemmed from electrical shock and burn injuries sustained by the 43-year-old plaintiff at a Philadelphia facility owned by the defendant Hygrade Food Products Company. The plaintiff claimed that Hygrade negligently modified its electrical equipment and removed a safety device which permitted the plaintiff to be injured. PECO was also named as a defendant in the case based on accusations that it negligently restored power to the modified equipment. Two additional defendants, who

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

were brought into the action on products liability theories, the electric equipment assembler and switch gear designer/manufacturer, both received directed verdicts at the close of evidence. The defendants maintained that the plaintiff was not qualified to work on the subject equipment and that the accident was caused by his own negligence.

On the day before the incident, in connection with his employment as an electrician, the plaintiff was assigned to go to the defendant Hygrade Food Product's facility located near the Philadelphia International Airport to look into the cause of trouble with the electrical equipment at the plant. The defendant PECO had also been contacted to come to Hygrade to cut off the power before the plaintiff began his work. PECO had not arrived to cut off the power when the plaintiff arrived at Hygrade. The plaintiff was met by an employee of Hygrade and they went together to the electrical equipment.

The electrical panel had a safety device, a key interlock system which if it had been in place, would mandate that the switches be turned in a specific sequence. Hygrade had removed or dismantled the interlock system because it needed a replacement part, according to evidence offered. The Hygrade employee threw a certain switch. The switch was not the correct one to be thrown and the fuses in the gear box blew and damaged the inside of the panel. Testimony indicated that the plaintiff was not trained on the type of high-voltage switch gear he was working on. Shortly after the fuses blew, PECO arrived and shut off the power so that the plaintiff could perform the work he had come to perform. When the plaintiff completed his work that day, PECO turned the power back on.

Apparently, due to the damage caused inside the panel when the fuse blew, a large handle on the outside of the electrical cabinet indicated that the power was off. However, a visual check through a window in the panel would have revealed that, in fact, the electrical connection was not disconnected. The day after the fuse blew, the plaintiff returned to the location to replace the fuse. He did not bring any safety equipment with him, including a device which would indicate if the power was coming into the gear box, nor did he wear any protective clothing. The plaintiff also did not look through the window of the panel to check that the electrical connection was unbroken. Using his bare hand, the plaintiff reached into the panel to replace the fuse and was hit with 13,200 volts of electricity.

The plaintiff alleged that PECO employees failed to follow standard procedure which required confirmation that the electrical switch at issue remained off until the work was completed. The plaintiff also contended that the defendant property owner, Hygrade Food Products, negligently removed the switch-gear lock, a safety device designed to prevent pulling of the switches in an incorrect sequence. The plaintiff argued that PECO created a safety hazard by restoring power to equipment on which the switch-gear lock had been removed.

The plaintiff's medical experts testified that the plaintiff's body actually caught fire due to the large electrical jolt and he suffered severe burns over 26% of his body, including his neck, chest and arms. The plaintiff's medical experts also testified that the plaintiff suffered nerve damage to his arms as well as short-term memory loss associated with the electrical shock. The plaintiff underwent ten surgeries and claimed medical expenses in excess of \$300,000. The plaintiff returned to his employment as an electrician six months after the accident.

The defendants argued that the plaintiff was comparatively negligent, was not qualified to work on the subject equipment and caused the switches to be opened out of sequence, resulting in the electrical explosion of the fuse. The defense contended that the plaintiff failed to check the switch gear to make sure the power was off prior to attempting to change the fuse.

After a day of deliberations the jury found the defendant PECO 50% negligent, the plaintiff 40% comparatively negligent and the defendant property owner, Hygrade Food Products, 10% negligent. The plaintiff was awarded \$2,375,00 million which was reduced accordingly. The award included \$75,000 in loss of consortium to the plaintiff's wife, who had separated from the plaintiff three years post-accident.

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The case is currently on appeal.

COMMENTARY:

Apportionment of liability was a central issue at trial with the plaintiff focusing on the defendant PECO's restoration of power to equipment from which a safety lock had been removed. Evidence showed that a replacement safety device was on order at the time of the accident and the property owner, Hygrade, argued that it hired the plaintiff to perform this work because the plaintiff represented himself to be a skilled and experienced high-voltage electrician and Hygrade's personnel were not so qualified. Hygrade also contended that it relied upon the plaintiff in deciding whether to postpone the work until after the safety device was repaired. These arguments were met with some apparent success, the jury assessing only 10% negligence against this defendant. The plaintiff attempted to counter assertions of comparative negligence by arguing that he saw the outside handle in the 'off' position and reasonably assumed that the power was shut off. However, unbeknownst to him, the handle was stuck in that position even after the power had been restored. In considering comparative negligence, the jury may have discussed the ease with which the plaintiff could have checked the electrical flow to the equipment or simply looked through the window of the panel to ascertain if the electrical connection was not broken.

The Court directed a verdict on the plaintiff's products liability claims against two additional defendants. These defendants successfully argued that the plaintiff was not an 'intended user' of the product since he was not qualified to operate the equipment and that the switch gear had been substantially modified. The defendant electrical equipment assembler additionally argued that a 12 year Statute of Repose barred the plaintiff's claim since the switch gear was installed in 1971.

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