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HILBURN vs. DEERE & CO.
88-3692

DATE OF VERDICT/SETTLEMENT: February 7, 1989

TOPIC: PRODUCTS LIABILITY - FAILURE TO INCORPORATE WARNINGS, OR PLACE INTERLOCK TO PREVENT CONSTRUCTION EQUIPMENT FROM BEING DRIVEN WHEN 'OUTRIGGERS' WERE PROTRUDING FROM MACHINE - PLAINTIFF'S LEG IS STRUCK AND CRUSHED AGAINST NEAR BY CONSTRUCTION MATERIALS - FRACTURED TIBIA AND PERMANENT CARTILAGE DAMAGE TO KNEE

SUMMARY:

Result: \$361,458 Verdict

EXPERT WITNESSES:

Plaintiff's: Stephen Wilcox from Phila.: Plaintiff's human factors expert.

J. Michael Whitaker from Doylestown.: Plaintiff's orthopedic surgeon.

ATTORNEY:

Plaintiff's: George J. Badey, III.; for plaintiff.

Defendant's: John J. Barrett, Jr for defendant.

JUDGE: Jan Dubois

RANGE AMOUNT: \$200,000-499,999

STATE: Pennsylvania

INJURIES:

PRODUCTS LIABILITY - FAILURE TO INCORPORATE WARNINGS, OR PLACE INTERLOCK TO PREVENT CONSTRUCTION EQUIPMENT FROM BEING DRIVEN WHEN 'OUTRIGGERS' WERE PROTRUDING FROM MACHINE - PLAINTIFF'S LEG IS STRUCK AND CRUSHED AGAINST NEAR BY CONSTRUCTION MATERIALS - FRACTURED TIBIA AND PERMANENT CARTILAGE DAMAGE TO KNEE

FACTS:

This was an action involving a former construction worker in his mid 20's, who was struck by a metal 'Outrigger' protruding from a large piece of construction machinery which was manufactured by the defendant and driven at the job site by a co-worker traveling in the same direction in which the plaintiff was walking. The plaintiff contended that as a result, his leg became pinned against construction materials situated several feet away as the truck continued moving, causing severe crushing fractures to his tibia and permanent cartilage damage to one knee. The machine, known as a front end loader/backhoe, included a rear portion containing the backhoe, and that when the machine is utilized as a backhoe, 'Outriggers,' or stabilizers extend from the body of the vehicle to provide additional stability and take pressure off the rear wheels. The plaintiff contended that when the vehicle is

being driven, there is be no purpose for the outriggers to be extended and that the equipment was defective due to the defendant's failure to incorporate either an interlock device attached to the transmission to prevent transport until the outriggers are fully retracted, or an electronic warning device which would advise an operator that the outriggers were partially extended. The plaintiff further contended that sideview mirrors should have been included.

The evidence revealed that when operating the backhoe, the operator would sit in the rear seat facing the rear backhoe, and that when transporting the machine, or using the front end loader, the operator sits in the front seat facing forward. The plaintiff contended that the co-worker/operator was not aware that the outriggers, which are situated behind the front driving seat, were extended as he drove the machine. The plaintiff contended that one of these safety features should have been incorporated into the machine. The defendant's expert engineer, a former employee of the defendant, contended that the machine was adequate as designed and that the partially extended outriggers would be necessary for performing certain tasks as the machine was moving, such as stabilizing it if the vehicle began to topple on uneven terrain, and to help carry certain loads. The plaintiff contended that in a prior statement, the defendant's expert had indicated that there would be no purpose for using the outriggers when the vehicle is not engaged in backhoe operations. The plaintiff's expert further contended that incorporating sideview mirrors would have enabled a driver sitting in the front operator's position to ascertain that the outriggers were not fully retracted. The defendant countered that sideview mirrors would not be effective because they would be frequently torn off as a result of the heavy construction work this machine is utilized for. The plaintiff was permitted, on the issue of feasibility and over defense objections, to introduce evidence that the defendant subsequently incorporated mirrors.

The plaintiff contended that as he was walking, the partially extended outrigger grabbed onto his leg and that as the equipment continued moving, his leg was crushed against construction material situated several feet away. The plaintiff contended that the co-worker driving the equipment was not aware that the outriggers were partially extended. The defendant contended that the co-worker should have been aware, especially in view of the large size of the outriggers. The defendant maintained that the sole cause of the incident was the failure of the co-worker to make adequate observations of the equipment and the plaintiff. The plaintiff presented a human factors expert who contended that in view of the time pressures at the job site, it was highly likely that ultimately, an operator would fail to ascertain that the outriggers were partially extended, and the plaintiff contended that the danger could have been obviated with the safety features advanced by the plaintiff.

The treating orthopedist contended that the tibia fracture was compound, comminuted and required the insertion of a pin. The physician indicated that although the fracture itself healed well, it had invaded the knee causing cartilage damage resulting in permanent pain and instability. The plaintiff played varsity football in high school and college and the defendant contended that any knee complaints probably stemmed from these activities. The plaintiff countered that he had never been previously diagnosed with knee problems. The plaintiff's orthopedist further contended that cartilage damage, confirmed by an arthroscopic examination,

revealed that the fracture had invaded the knee at this point and the plaintiff contended, therefrom, that it was obvious that the cartilage damage resulted from the subject injury. The physician contended that the plaintiff will permanently suffer some pain and instability in the knee and will be required to avoid strenuous activities.

The plaintiff related that he graduated college with a bachelor's degree in environmental biology and was employed as a construction worker since he had been unable to obtain a position utilizing his degree. The plaintiff, who contended that he can no longer work in the construction field, indicated that he subsequently obtained a sales position. The plaintiff related that this sales position is paying more than he earned as a construction worker and more than he would have currently earned in the environmental field, and made no future economic claims. The plaintiff contended, however, that he was formerly very active, continued to jog and play rugby, and maintained that he has been forced to give up these favored recreational activities. The jury found for the plaintiff and awarded \$361,000.

COMMENTARY:

The defendant had contended that the due to the large size of the outriggers, the co-worker/operator should have been able to observe that they were extended and should have observed the plaintiff, maintaining that the sole cause of the accident, therefore, was the failure of the operator to make adequate observations. The plaintiff effectively countered this position by presenting a human factors expert who maintained that in view of the time pressures on workers at a construction site, it was highly likely that such an incident would ultimately occur, and the plaintiff argued that the accident could have been easily prevented by the devices advanced by the plaintiff, which would either provide additional warnings to the operator that the outriggers were extended, or prevent the machine from being driven if the outriggers were not fully retracted. Additionally, the plaintiff, who argued that there was no need for the outriggers while the operator was moving the vehicle and that the interlock device attached to the transmission could have easily been included, endeavored to underscore its contention by pointing to a prior statement of the defendant's in-house expert whom, the plaintiff contended, had previously indicated that the outriggers were only necessary to provide support while the backhoe in the rear of the machine was being utilized and the machine would not be moving. Regarding damages, the plaintiff obtained a relatively large award in view of the absence of a claim for future lost wages. The nature of this incident involving a construction worker, who while performing his duties, had his leg literally scooped up by the protruding outrigger and crushed against nearby construction materials, probably had some affect on the size of the award. Additionally, the plaintiff argued that he was formerly very active and that the inability to continue favored recreational activities warranted a substantial award. In this regard, the plaintiff stressed that he had played varsity football in both high school and college, had continued organized sports after graduating college by joining a rugby club, and had continued to jog until the accident occurred. The plaintiff's emphasis that this particular individual was especially sports oriented and deprived of an element of his enjoyment of life that was particularly important to him, was probably also a determining factor in the size of the award.

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