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CASE IN POINT

February 14, 2012

Inadequate guard on recycling baler leads to worker's arm amputation

The plaintiffs sued the baler's manufacturer, alleging that the machine was defectively designed in that it lacked adequate horizontal and vertical guards. The jury awarded about \$6.94 million. Wessling v. Marathon Equip. Co.



Kenneth Wessling, 40, was operating a Marathon Horizontal Auto-Tie Baler, a machine that compresses and binds materials such as paper and cardboard into blocks for transport and recycling. The machinery included a twister mechanism, a gear-driven apparatus designed to twist and cut baling wire for the binding process. As Wessling reached beneath the mechanism to clear away some paper, his left coat sleeve became caught on a wire being twisted around a twister rod. His left, nondominant arm was drawn into the machine and amputated

below the elbow.

Wessling underwent five surgeries to save his elbow. After rehabilitation, he was fitted with a prosthetic arm, which will need to be replaced every three to five years. Wessling's past medical expenses totaled about \$327,600. His life-care plan for future medical expenses and prosthetic devices is estimated at about \$1.52 million. His costs will increase substantially if his elbow requires amputation.

At the time of the incident, Wessling was earning about \$64,000 annually as a baler operator. He missed more than three years of work and incurred about \$276,100 in lost earnings. Unable to return to manual labor, he obtained a degree in medical technology and now works as a medical technician. He hopes to become a radiology technician, which is a higher paying profession. If he obtains this goal, his lost future earnings are estimated at \$338,700. If he remains in his current job, his lost future earnings are estimated at about \$748,600.

Wessling and his wife sued Marathon Equipment Co., which manufactured the baler, alleging that it was defectively designed because it lacked adequate guards. Specifically, the plaintiffs contended that the baler lacked a fixed horizontal guard over the bottom of the twister housing area and workers removed the vertical guards in front of the twister housing mechanism so that they could see the twisters and ensure that they were catching the baling wire. The plaintiffs offered evidence that the defendant was aware that vertical guards in the twister area were being removed and that company representatives had seen the machine with the guards missing. The plaintiffs contended that a horizontal guard would have prevented Wessling's arm from becoming caught.

The defendant argued that Wessling was negligent for reaching beneath the machine rather than using hand tools that had been provided for him.

The jury awarded about \$6.94 million, allocating fault at 70 percent to Marathon and 30 percent to Wessling. The verdict included about \$3.29 million in economic damages; \$3.4 million in noneconomic damages for past and future pain and suffering; and \$250,000 for loss of consortium. After allocation of fault, Marathon is responsible for about \$4.86 million. The state department of labor has asserted a lien of about \$481,500.

The defendant has appealed.

Citation: *Wessling v. Marathon Equip. Co.*, No. 09-2-27691-9KNT (Wash., King Co. Super. Oct. 31, 2011).

Plaintiff counsel: AAJ member John R. (Jack) Connelly Jr. and Micah R. LeBank, both of Tacoma, Washington; and Anthony Russo, Seattle.

Plaintiff experts: Richard Gill, human factors, Spokane, Washington; Richard Ziernicki, mechanical engineering, Denver; John Fountaine, vocational rehabilitation, Bothell, Washington; and Janna Friedly, physical medicine and rehabilitation, and Robert Moss, economics, both of Seattle.

Defense experts: Richard Cook, accident reconstruction, Anacortes, Washington; and Jennifer Simms, economics, Washington, D.C.

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