

# Defense Verdict Reached in Fatal Products Liability Case

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BY AMARIS ELLIOTT-ENGEL

Of the Legal Staff

A Philadelphia jury recently returned a defense verdict in a products liability case after a jury found the manufacturer of a garbage truck loading mechanism was not at fault for a sanitation worker's death.

The jury found that the manufacturer did not defectively design a garbage truck loading mechanism and did not fail to adequately warn the sanitation worker who died from a head injury after jumping from the back of a garbage truck when a fire started in the truck.

Steven G. Powers was riding on the back of a trash truck as part of a three-member sanitation crew for the Upper

Chichester Sanitation Department in Delaware County, according to the plaintiff's pretrial memorandum in *Powers v. Heil Environmental Industries*. Powers and his co-worker, Gary Beam, were standing on the back of the truck with their feet on a Heil Co. rollbar mechanism used to empty dumpsters into the garbage truck's hopper when a fire broke out in the hopper April 18, 2005.

Because of the fire, Powers and his co-worker jumped from the truck, and Powers struck his head on the ground, leading to brain injuries that caused his death six days later, plaintiff's papers said. Powers' wife, Julie, brought the lawsuit.

The plaintiffs argued in their papers that the side steps the workers stood on

were "substantially obstructed" by the rollbar's hydraulic mechanism and the sanitation workers rode while standing on the rollbar because they only had a small, unobstructed area to stand on to the side. The plaintiffs also said there were handles set above the rollbar mechanism, which enticed workers to stand at the rear of the truck on the rollbar mechanism.

Defendants Heil Environmental Industries Ltd., the Heil Co., Dover Corp. and Heil Equipment Co. of Philadelphia Inc., said in their pretrial memorandum that its rear-end loaders are equipped with steps to allow sanitation workers to ride rather than walk during collection activities, but the workers were supposed

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## Defense Verdict

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to ride in the cab of the truck for anything other than house-to-house pickups. The Heil defendants said in papers that Powers and Beam were riding on the back of the truck on top of the rollbar mechanism while traveling to their next location, and the accident would not have happened if Powers had been riding in the cab or on the side steps. The Heil defendants also argued Powers assumed the risk of his injuries.

Philadelphia Judge Paul P. Panepinto presided over the trial, which ended in a 10-2 defense verdict June 26, according to counsel in the case.

John J. "Jack" Snyder and William J. Carr of Rawle & Henderson were the Heil defendants' counsel. Gerald B. Baldino Jr. of Sacchetta & Baldino was plaintiff's counsel.

Snyder and Carr were brought into the case by Heil's excess insurance carrier, Lexington Insurance Co., the lawyers said.

Carr said they talked to the jury afterward and the majority said the evidence was clear that workers should have been in the cab of the truck at the time of the fire, and they believed the truck was going more than 10 mph when the men jumped from the truck.

The defense also presented evidence that there was a sticker on the trash truck warning workers if the truck was traveling more than two-tenths of a mile or traveling faster than 10 mph that the workers should ride in the cab of the truck, Carr said.

Carr also said defense expert witness Kelly Kennett, a biomechanical engineer from Georgia, presented a demonstration that Powers should have been able to safely jump off the truck if the truck had been traveling at a slow speed.

Baldino said the jurors were swayed against the plaintiff's arguments because the judge declined to recharge the jurors when the jurors came back within three hours of starting deliberation and said they didn't understand what a defect in a product was and that they wanted to be recharged on strict liability law.

Baldino said jurors told him afterward

they didn't understand the theory of the case.

Baldino also said the case was tainted by negligence evidence. In post-trial motions, Baldino argued that the judge committed an error of law or abuse of discretion by failing to prohibit the defense of assumption of risk and deliver an instruction regarding the applicability of this doctrine to situations where "the product was supplied by an employer to the decedent for use in his employment."

The motion for post-trial relief said that issues of negligence were injected into this strict products liability case because the defense of assumption of risk was allowed into the trial.

Carr said in a follow-up interview that the defense position is that negligence principles didn't come into the case, and that Panepinto was hard on the defense, even precluding two of their expert witnesses from testifying.

Carr also said that the jurors' questions were over what the plaintiff had to prove in a strict liability claim, as well as the definition of defect and the definition of misuse.

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Panepinto did not address the jury's question on misuse because the jury had not been originally charged on misuse, Carr said.

The plaintiffs demanded \$7.5 million, before reducing their demand during the course of mediation to \$5 million for the total of Heil Co.'s self-insured liability insurance limit, plaintiff's papers said. The defendants offered \$850,000, according to plaintiff's and defense papers. The judge pro tem placed a value of \$5 million to \$5.25 million on the case, plaintiff's papers said.

The defense said in their memo their offer was "literally crumpled up and thrown back at defendants."

Baldino said that he did literally crumple up the offer because the defense came into the second day of mediation not really ready to talk and not coming anywhere near the plaintiff's demand.

"We were millions of dollars apart," Baldino said.

Carr said the structured settlement package offered by the Heil defendants and Lexington would pay out around \$1 million. •