

enter plaintiff's hand while wearing them because his hand would be insulated from electricity.

In support of his claims, plaintiff offered testimony of two experts. The first of plaintiff's experts performed testing to determine the possibility that electricity could travel through the aerosol mist. However, on cross-examination, he admitted that he was never able

to reproduce an arc over event at the accident voltage and distance. Furthermore, he admitted that he did not know if the aerosol spray allowed the electric current to travel from the switch through the spray. The defense also exposed through cross-examination that plaintiff's warnings expert had no actual understanding of the equipment on which plaintiff was working or the mechanism by

which plaintiff alleged he was injured.

After one and a half hours, the jury returned a unanimous verdict in favor of defendant, finding that the product was not defective as designed and contained adequate warnings and instructions to make the product safe for its intended use.

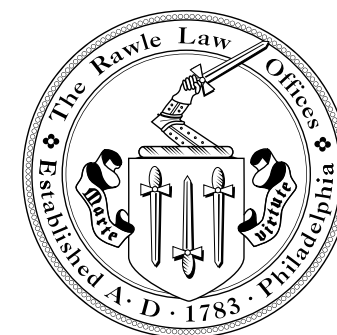
John J. Snyder focuses his trial practice in the area of the defense of catastrophic injury, with particular emphasis on construction, industrial, pharmaceutical, medical malpractice and product liability matters. He is a very experienced litigator having tried large number of trials to verdict in Philadelphia and the surrounding counties. He and his practice group specialize in receiving high exposure cases weeks to months before trial, and trying the case to verdict. He is an active member of the bar in the states of Pennsylvania, New York and New Jersey. He is also admitted to practice in the federal courts of Pennsylvania as well as the United States Court of Appeals for the Third Circuit.

Tara Gill Nalencz focuses her practice on the defense of product liability, medical malpractice and general casualty matters. Ms. Nalencz obtained her law degree from the Temple University School of Law in 2004. She earned her Master of Arts degree in 2001 from Pennsylvania State University and her Bachelor of Arts degree, *cum laude*, in 1999 from Dickinson College.

Upon graduating from Temple Law School, Ms. Nalencz served a one-year judicial clerkship for the Honorable Samuel D. Natal in the Superior Court of New Jersey in Camden, New Jersey. She also served a two-year clerkship for the Honorable Annette M. Rizzo, Philadelphia Court of Common Pleas. She is admitted to practice in Pennsylvania and New Jersey.

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PRODUCT LIABILITY

Defense Verdict



John J. Snyder **Tara Gill Nalencz**

John J. Snyder and Tara Gill Nalencz, recently obtained a defense verdict in an eleven day products liability trial before the Honorable Nitza I. Quinones Alejandro in the Philadelphia Court of Common Pleas. The gravamen of Plaintiff's claims was that the product was defective as designed and failed to contain adequate warnings/instructions regarding its use. Prior to trial, the plaintiff's demand was \$12 million. Defendant made no settlement offer.

Plaintiff was a fourth year apprentice journeyman lineman employed by an electrical utility company, who was injured when he received an electrical shock. At the time of the accident, plaintiff was performing routine maintenance on three pole top electrical switches. This process included spraying the keeper, an energized component of the switches, with an aerosol cleaning solution manufactured by defendant. Plaintiff alleged his injuries were caused by an arc over event initiated by an aerosol spray manufactured by defendant, which caused electricity to strike him in the right hand and forearm, traveling through his body and exiting from his right hip, which was in contact with ground. Plaintiff claimed that at the time of the accident he was wearing rubber sleeves from his wrist to his shoulder, which were tucked into rubber gloves. Both the rubber gloves and sleeves were rated to

withstand up to 20,000 volts. His injuries included fourth degree full thickness burns requiring skin grafts and numerous surgical procedures for related keloid scarring.

The defense, however, maintained that the product was non-conductive and would not initiate an arc over event as designed. Furthermore, the defense asserted that the warning/instruction contained on the product, "For personal safety, do not apply while equipment is energized" was adequate to prevent users of the product from being shocked under any circumstances, and, if followed, would have prevented the accident. Additionally, the defense emphasized that the actual cause of the accident was the conduct of plaintiff, in violating utility procedure by allowing himself to come into contact with ground, and the conduct of his employer, in working on energized equipment when unnecessary and in violation of OSHA regulations.

At the time of the accident, plaintiff was standing in one of two insulated buckets lifted by an insulated boom to the top of the electric pole. Plaintiff had performed maintenance on that type of switch approximately one to one-and-a-half years earlier but the pole top switches had been completely de-energized at that time. Plaintiff was in the driving bucket controlling the positions for himself and his co-worker in the adjoining bucket. Upon cross-examination, plaintiff admitted that even though there was a ground nearby, he took no precautions to insulate himself from it by covering it with rubber. When plaintiff discovered he could not reach one of the energized keeper from his position in the bucket, plaintiff's co-worker told him to move the bucket and he would clean the keeper for plaintiff. Plaintiff refused. Instead, plaintiff stepped up on a footstep inside the bucket to enable him to reach. By leaning out of the bucket, plaintiff contacted ground with his right hip – the same ground that he failed to insulate with rubber. As defendant's expert testified and plaintiff's experts admitted under cross-examination, had the ground been covered with rubber plaintiff could not have been injured, because there would be no path for electricity to travel.

On cross-examination, plaintiff admitted that he had been trained not to step up on anything in the bucket and not to reach out of the bucket. He further acknowledged that stepping up and reaching was a violation of his safety manual and training. Significantly, plaintiff admitted that stepping up in the bucket eliminated his protection of the insulated bucket.

Additionally, the can of aerosol cleaner contained a warning/instruction printed in yellow, which stated: "For per-

sonal safety, do not apply while equipment is energized." On cross-examination, plaintiff admitted that he never read this warning/instruction, despite having worked with this product for several years prior to the date of the accident. Defendant's expert, former Director of Safety Standards at OSHA who was instrumental in developing the regulations at issue with regard to the product, testified that the warning/instruction was more than adequate. Defendant's expert further testified that had the warning/instruction been read and followed plaintiff never could have been injured.

Further, as pointed out the defense and admitted by plaintiff, if both sides of the pole top switches had been de-energized, plaintiff never could have been injured. As explained by defendant's expert, and uncontradicted by plaintiff, if it would not disrupt service to customers, plaintiff's employer had a duty under OSHA 29 CFR 1910.269 to completely de-energize the switches before working on them. Through cross-examination of plaintiff's co-employees, the defense established that it would have taken only 20 minutes to completely de-energize the pole top and service would not be interrupted to any customers.

The defense also presented evidence through cross-examination of plaintiff's witnesses that after conducting its own investigation, plaintiff's employer concluded that the conduct of its employees, including plaintiff, were the direct causes of the accident. Its findings included working on energized equipment when unnecessary and insufficient guarding of ground and energized parts in the work area, improper positioning of bucket in the work zone causing plaintiff to reach across the structure, and improper worker position in the bucket by climbing up onto the step inside the bucket to extend his reach.

Plaintiff, however, alleged that after spraying the aerosol cleaner on the energized keeper, electricity arced over through the aerosol mist of the cleaner, traveled around the can, over the leather gauntlet on top of his rubber glove, around the cuff of his rubber glove near his mid-arm, through a crevice between overlapping rubber glove and rubber sleeve, and up along the inside of his glove to the top of his right hand. Through cross-examination of plaintiff's witnesses and direct examination of the defense's expert, however, the defense proved that plaintiff could not be shocked even if grounded and directly touching the energized keeper, as long as his hand was gloved. On cross-examination, plaintiff's employer admitted that plaintiff's gloves were examined and tested immediately following the accident and found to be compliant with all requirements and showed no evidence of electrical damage. Finally, as the defense expert explained, if plaintiff's gloves were intact, it would be impossible for electricity to