

PHILADELPHIA

PRODUCTS LIABILITY

Wrongful Death — Design Defect — Failure to Warn

Worker jumped off dump truck, struck head on ground

VERDICT	Defense
CASE	Julie Powers, as executrix of the Estate of Steven Powers v. Heil Co., No. 070400517
COURT	Philadelphia County Court of Common Pleas, PA
JUDGE	Paul P. Panepinto
DATE	6/26/2009
PLAINTIFF ATTORNEY(S)	Gerald B. Baldino, Jr., Sacchetta & Baldino, Media, PA
DEFENSE ATTORNEY(S)	William J. Carr, Rawle & Henderson, LLP, Philadelphia, PA John J. Snyder, Rawle & Henderson, LLP, Philadelphia, PA

FACTS & ALLEGATIONS On April 18, 2005, plaintiff's decedent Steven Powers, 42, an Upper Chichester Township waste department worker, was standing with a co-worker on the back of a moving dump truck. They were standing on the metal roll bar—a hydraulic-powered bar, 4 inches wide, which ran across the back of the truck to lift dumpsters—instead of the designated tread-resistant 8-inch wide step. A fire erupted in the hopper. The co-worker asked Powers what to do and Powers said they should jump. Powers landed on his feet, lost his balance, fell backward and struck the back of his head on the macadam. The co-worker broke his arm. Powers died from a traumatic brain injury on April 24.

Powers' widow sued truck manufacturer Heil Co., of Chattanooga, Tenn., for products liability, alleging the steps were defectively designed and resulted in his wrongful death.

The plaintiffs' automotive safety expert opined that the steps were uncomfortable to stand on because they exposed workers to being struck by tree branches, mailboxes and vehicles' side mirrors, forcing workers to stand on the roll bar, which, although more comfortable, was not intended for such use. However, there were no warnings on the truck to warn users not to stand on the roll bar, according to the plaintiffs' human factors expert, who said that the handle used in concert with the side step was waist high and prevented the user from maintaining a strong and secure grip.

In the alternative, the defendant should have equipped the truck (which was manufactured in 1991) with wraparound steps that would allow users to better avoid fire exposure and enable them to pull themselves closer toward the truck to avoid tree branches, opined the automotive safety expert.

Further, the truck should have had a camera attached to the rear which would have allowed the driver to see the fire and immediately stop the vehicle.

The truck driver testified that he didn't hear his co-workers screaming nor did he see them. He said that he was traveling less than 7 miles per hour before a car pulled out from a residential driveway about 30 feet in front of him which caused him to slow down and almost come to a complete stop (at which point was estimated at 2 to 3 mph). According to the plaintiff, Powers and the co-worker dismounted as the truck was slowing down.

Heil Corp. denied that the steps were defective, asserting that the designated side steps adhered to the American National Standards Institute (ANSI). Had Powers and his co-worker been standing on the side steps instead of the roll bar (which put them directly in front of shooting flames) at the time of the fire, they would have been shielded by the truck's metal side and protected from the fire. There was no warning on the roll bar (which was 18 inches off the ground when the workers moved the bar from its stowed position underneath the truck's hopper) because it was industry standard that workers were prohibited to ride on the rear if the truck was traveling more than one fifth of a mile or more than 10 mph, testified the defense ANSI expert, who said that there were numerous other ANSI warnings on the truck and inside the cab that conveyed this rule. Counsel argued that if Powers ignored these visible warnings, it was presumed that he would not adhere to an additional sticker that prohibited riding on the roll bar.

Defense counsel argued that the truck intended to turn onto a 35-mph road to travel to the next pickup point which was more than one fifth of a mile away. As a result, Powers and his co-worker were required by industry standards to travel in the truck's cab, defense counsel argued.

As to the plaintiff's contention that the truck's side steps allowed riders to be struck by tree branches, mailboxes and vehicle side mirrors, defense counsel maintained that it is the driver's duty, through the assistance of the truck's large side mirrors, to avoid such objects. Since a rider should not be on the back of a truck traveling over 10 miles per hour, the impact of a said object would not be great enough to cause discomfort, defense counsel added.

According to the defense, the wraparound step design proposed by the plaintiffs' expert had been banned by the ANSI and Environmental Industry Associations since 1999 due to, among other things, rider injuries in rear-end accidents. The defense showed a video of a worker pinned onto the hood of a car after it rear-ended a waste truck fashioned with wraparound steps.

The defense biomechanical engineer, through a video demonstration, showed that when the truck is traveling 4 to 7 mph, an individual is able to step off onto the macadam and stop immediately. At 10 mph, the individual had to take a step or two but easily maintained his balance. The expert opined that if a person did fall at the rate of speed alleged by Powers' co-worker, it would not have been with a great enough force to cause the traumatic head injury.

The defense contended that a camera system was an added feature the township chose not to purchase when it acquired the truck and that the sole purpose of a rear camera is for the driver to observe the riders loading trash so that the truck does not back into them.

On cross-examination of the plaintiffs' human factors expert, defense counsel noted that the truck was equipped with a bar at chin level in addition to the waist handle bar.

INJURIES/DAMAGES *blunt force trauma to the head; death; loss of consortium; traumatic brain injury*

Powers was taken by ambulance to Crozer-Chester Medical Center where he was sedated and underwent two craniotomies. He was in a coma until he died six days later.

The decedent was conscious for 30 to 45 minutes post-accident during which time he endured pain and suffering, opined a forensic pathologist expert. His estate sought to recover \$509,000 in past medical expenses and \$2.5 million in past and future lost earnings.

According to his widow, Powers, who left behind three children (two from a previous marriage), was a 25-year volunteer firefighter who worked as a waste collector for about 10 years and was known by his colleagues as "Mr. Safety." He was the type of person who would give the shirt off his back, said his wife, who sought damages for loss of consortium.

RESULT The jury found that the product was not defective in design and did not lack adequate warning or instructions necessary to make the product safe for intended use.

DEMAND \$7,500,000
OFFER \$1,200,000 (structured settlement)

INSURER(S) Lexington Insurance Co.

TRIAL DETAILS Trial Length: 8 days
Trial Deliberations: 3.5 hours
Jury Vote: 10-2
Jury Composition: 7 male, 5 female

PLAINTIFF EXPERT(S) Jonathan L. Arden, M.D., forensic pathology, McLean, VA
Byron Bloch, auto safety, Potomac, MD
Royal A. Bunin, M.B.A., economics, Wynnewood, PA
Stephen B. Wilcox, Ph.D., human factors — see also technical-engineering-ergonomics, Philadelphia, PA

DEFENSE EXPERT(S) Kelly B. Kennett, Ph.D., biomechanical, Atlanta, GA
Gerald Zanzig, mechanical, Signal Mountain, TN

POST-TRIAL Plaintiffs' counsel filed a motion for a new trial.

EDITOR'S NOTE This report is based on information that was provided by defense counsel. Plaintiffs' counsel did not respond to the reporter's phone calls.

—Aaron Jenkins

PREMISES LIABILITY

Trip and Fall — Dangerous Condition — Parking Lot

Plaintiff said defective curb caused hip fracture, pain

VERDICT \$600,000
ACTUAL \$558,406

CASE Jerry Gubin and Lynne Gubin v. Danella Realty & Management Co. Inc., Village Shires Community Association and Beacon Community at Village Shires, No. 080202658

COURT Philadelphia County Court of Common Pleas, PA

JUDGE Frederica A. Massiah-Jackson
DATE 6/24/2009

PLAINTIFF ATTORNEY(S) Bentley M. Saul, Bentley M. Saul, Ltd., Philadelphia, PA
Andrew D. Swain, The Swain Law Firm, Bensalem, PA

DEFENSE ATTORNEY(S) William V. Coleman, McCormick & Piore, P.C., Philadelphia, PA

FACTS & ALLEGATIONS On Dec. 17, 2007, between 10:00 p.m. and 11:00 p.m., plaintiff Jerry Gubin, 66, who worked for his family's party planning business, tripped on street curbing while helping his son move into a condominium at the Beacon Community at Village Shires condominium complex in Holland. Gubin claimed that when he planted his right foot on the curb (which was adjacent to a parking lot), his foot twisted and he fell, breaking his right hip. Gubin alleged that the curb was deteriorated and, because it was too dark, he had placed his foot unknowingly inside a crevice which had formed over time.

Gubin and his wife sued Beacon, Village Shires and the complex's management, Danella Realty & Management Co. Inc., of Blue Bell, for premises liability.

Plaintiffs' counsel asserted that the defendants repaired the curb in question soon after the accident but produced photos prior to its repair, showing a badly broken and deteriorated