

**\$500,000 VERDICT - PRODUCTS LIABILITY - FAILURE TO GUARD NIP POINT ON INDUSTRIAL MACHINE - TRAUMATIC AMPUTATION OF DISTAL PORTION OF INDEX FINGER - SUBSEQUENT DEVELOPMENT OF REFLEX SYMPATHETIC DYSTROPHY - PSYCHIATRIC OVERLAY - SEVERE PAIN.**

*Phila. County*

This was a products liability action in which the plaintiff assembly line worker at a bakery contended that the industrial machine manufactured and designed by the defendant for the use by the employer, Tastykake to convert 18 rows of cupcakes to three rows was defective in that the defendant failed to guard a sprocket and chain nip point on the device. The plaintiff contended that as a result, she suffered the traumatic amputation of the distal portion of the index finger when she attempted to remove cake and icing which had lodged on the nip point. The plaintiff further contended that the amputation ultimately occasioned reflex sympathetic dystrophy and that although the physical component of the injury was successfully addressed within a matter of months of the onset of reflex sympathetic dystrophy through nerve blocks injections, she continues to suffer severe pain which the plaintiff argued is largely psychiatric in origin. The plaintiff also contended that she suffered a severe psychiatric depression.

The plaintiff's expert engineer contended that the nip point should have been guarded and that the failure of the manufacturer to provide a guard rendered the machine defective. The defendant argued that the workers would not require access to the area of the nip point and that the employer who set up the configuration of the relatively large system should have placed a barrier around the entire area of this portion of the large machine to prevent access to this nip point and movable "Arms" on the conveyer, contending that such safeguards would be much better than a localized guard and that the employer was in a better position to place such a barrier because it was aware of the location in which this portion of the conveyer-type system would be placed. The defendant also contended that the plaintiff, who reached into a moving machine, had assumed the risk of injury.

The plaintiff maintained that she believed that the cake on the sprocket would interrupt the flow of cake on the conveyer belt, that she observed difficulties at the time, and she did not appreciate the nature of the risk at the time she was attempting to keep the operation running smoothly. The defendant contended through co-employees that the cake on the sprocket did not cause the difficulties allegedly observed by the plaintiff and the plaintiff countered that she subjectively believed that the presence of the cake on the sprocket had caused such problems. The defendant also contended that other employees had previously utilized a pole to remove cake from the area and the defendant argued that the plaintiff was probably aware of this option and had consciously decided not to employ this safety device. The plaintiff contended that she was not aware of the opportunity to utilize the pole.

The plaintiff suffered the amputation of the distal portion of the index finger on the dominant hand. The plaintiff related that after her initial recovery she continued to experience a dull pain for an approximate four year period until the nail bed started growing back at which time the pain

became severe. The plaintiff also noticed that during this four year period, she suffered a continuing phobic reaction to this particular machine. The plaintiff, who returned to work ten weeks after the accident, related that she could not work near this machine. The plaintiff maintained that after this four year period she commenced experiencing severe pain. The in-house company doctors made a finding upon the onset of this extensive pain that it was psychological in origin.

The plaintiff's treating orthopedic surgeon diagnosed reflex sympathetic dystrophy a short time after the pain increased and the evidence disclosed that physicians obtained by the employer who were not the in-house company doctors then concurred in this diagnosis. The plaintiff underwent a series of nerve block injections several months after the diagnosis and all of the physicians concurred that the injections were largely successful and had substantially resolved any physiological cause of the plaintiff's continuing severe pain. The plaintiff's orthopedist and psychiatrist contended, however, that the plaintiff had suffered a severe psychiatric reaction which was manifesting in continuing pain. The plaintiff's psychiatrist contended that the plaintiff strongly believed that her pain was physical in nature and would not accept that there was a psychiatric cause. The psychiatrist who related that the plaintiff had undergone psychotherapy for some time because of the severe phobic reaction to the machine, testified that the plaintiff had declined to continue despite the physicians' advisements that psychotherapy was necessary to treat the continuing pain. The plaintiff testified that she believes that her pain is physical in origin and the plaintiff denied during her testimony the existence of any significant continuing psychiatric difficulties.

The plaintiff's psychiatrist additionally contended that the plaintiff suffered a severe reactive depression as a result of the accident. The physician contended that the plaintiff has become very withdrawn, cries frequently and sleeps excessively. The plaintiff also maintained that she generally declines to participate in family activities and her sister testified that the plaintiff, who had moved into her mother's home with her children, stayed in her room during a Thanksgiving Day dinner. The plaintiff also contended that the plaintiff is obsessed with the prior finding of reflex sympathetic dystrophy and discusses a nerve injury with people excessively. The defendant contended that the plaintiff's subjective complaints of continuing pain should not be accepted and maintained that in view of the undisputed medical testimony that the physical cause of the alleged continuing pain had substantially resolved, the plaintiff's contentions should be rejected. The defendant further maintained that if the plaintiff was suffering a psychiatric overlay, such a condition stemmed from unrelated difficulties such as her pre-accident divorce and the break-up with her subsequent fiancée' at about the time the increased pain commenced.

The evidence revealed that the plaintiff had been terminated by the employer prior to the trial and the plaintiff argued that her termination was prompted by her continuing difficulties. The plaintiff's psychiatrist contended that in the absence of intensive in-patient psychiatric care, the plaintiff will permanently remain unemployable, and the plaintiff contended that she would sustain future losses of approximately \$450,000 if she cannot return to work. The psychiatrist contended that with a 3-4 week in-patient stay, the plaintiff would have a better than 50% chance of obtaining significant improvement and return to work. The defendant contended that if the

plaintiff's contentions of a current psychiatric inability to work were accepted, the plaintiff had failed to mitigate her damages by obtaining needed care and the Court instructed that the jury could consider this defense argument. The plaintiff maintained that her denial of a psychiatric overlay constituted a component of her emotional injuries. The defendant produced no medical testimony. The jury found for the plaintiff and awarded \$500,000. Plaintiff's engineer: Frederic Blum from Phila. Plaintiff's orthopedist: Donald Kovalsky from Phila. Plaintiff's psychiatrist: Theodore Weiss from Phila. Miller vs. Franklin Institute Research Labs, Inc. Judge Louis Hill, 12/19/89. Attorney for Plaintiff: Louis Podel, Esquire; Attorney for Defendant: George J. Murphy.

Pennsylvania Jury Verdict Review and Analysis  
Volume 8, Issue 4 - February, 1990