



Canister's defect led to fatal burst of fire, estate alleged

Type: Mediated Settlement

Amount: \$3,750,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):

- *brain* - coma
- *burns* - third degree; second degree
- *other* - death
- *surgeries/treatment* - skin graft
- *pulmonary/respiratory* - respiratory

Case Type:

- *Products Liability* - Design Defect; Strict Liability; Manufacturing Defect

Case Name: Huu Thien Tran as Administrator of the Estate of Khanh Toan Tran, Deceased, and Zhu Ai Chen v. Worthington Industries, Inc. Worthington Cylinder Corporation, Inc., Worthington Cylinders Wisconsin, LLC and 65/6 Economy Enterprises Inc., No. 4777/10

Date: February 27, 2014

Plaintiff(s):

- Zhu Ai Chen (Female, 37 Years)
- Estate of Khanh Toan Tran (Male, 40 Years)

Plaintiff Attorney(s):

- Jay W. Dankner; Dankner, Milstein & Ruffo, P.C.; New York NY for Estate of Khanh Toan Tran, Zhu Ai Chen

Plaintiff Expert (s):

- Alan M. Leiken Ph.D.; Economics; Stony Brook, NY called by: Jay W. Dankner
- Karl J. Puttlitz Ph.D.; Metallurgy; Wappingers Falls, NY called by: Jay W. Dankner
- Robert G. Zalosh Ph.D., P.E.; Fuel Fires; Wellesley, MA called by: Jay W. Dankner
- Richard A. Hoffman P.E.; Metallurgy; Brewster, NY called by: Jay W. Dankner

Defendant(s):

- Worthington Cylinder Corp.
- Worthington Industries Inc.
- 65/6 Economy Enterprises Inc.
- Worthington Cylinders Wisconsin, LLC

**Defense
Attorney(s):**

- Eric J. Berger; Cozen O'Connor; New York, NY for Worthington Industries Inc., Worthington Cylinder Corp., Worthington Cylinders Wisconsin, LLC, 65/6 Economy Enterprises Inc.
- John J. McDonough; Cozen O'Connor; New York, NY for Worthington Industries Inc., Worthington Cylinder Corp., Worthington Cylinders Wisconsin, LLC, 65/6 Economy Enterprises Inc.
- Paul J. Zola; Cozen O'Connor; New York, NY for Worthington Industries Inc., Worthington Cylinder Corp., Worthington Cylinders Wisconsin, LLC, 65/6 Economy Enterprises Inc.
- Richard A. Ergo; Bowles & Verna LLP; Walnut Creek, CA for Worthington Industries Inc., Worthington Cylinder Corp., Worthington Cylinders Wisconsin, LLC

**Defendant
Expert(s):**

- R. Thomas Long Jr. P.E., C.F.E.I.; Fire Science; Bowie, MD called by: for Eric J. Berger, John J. McDonough, Paul J. Zola
- Joseph B. Sala Ph.D.; Ergonomics/Human Factors; Philadelphia, PA called by: for Eric J. Berger, John J. McDonough, Paul J. Zola
- Thomas W. Eagar Sc.D., P.E.; Metallurgy; Cambridge, MA called by: for Eric J. Berger, John J. McDonough, Paul J. Zola

Insurers:

- Travelers Property Casualty Corp.
- Ace Group of Cos.

Facts:

On Jan. 27, 2008, plaintiff's decedent Khanh Toan Tran, 40, an employee of the U.S. Postal Service, was renovating the kitchen of his home, which was located in the Bensonhurst section of Brooklyn. During the course of the project, Tran attempted to solder a pipe. He located a brass soldering torch, and he attached a canister that contained a stabilized mixture of methylacetylene and propadiene. The canister's contents subsequently ignited, and Tran was engulfed by flames that caused fatal burns.

Tran's father, Huu Thien Tran, acting as the administrator of his son's estate, sued the canister's manufacturer, Columbus, Ohio-based Worthington Cylinder Corp.; a related entity, Columbus-based Worthington Cylinders Wisconsin, LLC; the companies' parent, Columbus-based Worthington Industries Inc.; and the retailer that sold the specific canister that the younger Tran used, Brooklyn-based 65/6 Economy Enterprises Inc. The estate alleged that the canister was defectively designed and manufactured, that the defect caused the younger Tran's injuries, that Worthington Industries and its subsidiaries were liable for the defect, and that 65/6 Economy Enterprises was strictly liable for the defect.

The estate's counsel claimed that the accident occurred while Tran was attempting to ignite the torch. The estate's expert metallurgists submitted reports in which they opined that the accident was a result of gas having escaped out of a cracked portion of the canister. They contended that the crack was located near the housing that connected to the torch, and they suggested that the defect was a result of phosphorus having been used during Worthington Cylinder's brazing of the canister. They claimed that phosphorus weakened the canister, and the estate's expert engineer submitted a report in which he opined that a relatively minor force could have caused a crack that would have completed a "fire triangle," which comprises a flammable substance, oxygen and a source of ignition. The expert contended that the result would have been the creation of a large fireball.

The estate's counsel estimated that 20 similar accidents had been caused by defects of the same brand of canister. He noted that the canister's manufacturing rights had been acquired in 2004, and he claimed that Worthington Cylinder immediately pursued the development of a brazing process that did not include phosphorus. The process could not be developed, and the canisters' production ended in 2008.

Defense counsel acknowledged prior accidents that involved the same brand of canister, but they claimed that the incidents were a result of users having abused the canisters.

The defense's expert metallurgist submitted a report in which he noted that the canister was composed of low-carbon steel. He opined that phosphorus could not embrittle low-carbon steel. The defense's expert engineer submitted a report in which he opined that the accident was not a result of a minor force having cracked the canister. He suggested that Tran tripped, fell onto the canister and caused a resultant fracture of the canister. Defense counsel noted that Tran's feet were bare, that tools were strewn about the floor of Tran's kitchen, that Tran's soldering torch was bent to an angle of 45 degrees, and that an autopsy indicated that Tran was suffering fractures of his left ankle and his left foot.

Injury: Tran sustained second- and third-degree burns of the unclothed areas of his body. He was placed in an ambulance, and he was transported to a hospital, where a coma was induced. He required mechanical control of his respiration, and he underwent extensive treatment that included the application of grafts of skin. He did not emerge from his coma, and he died after 30 days had passed.

Tran was survived by a wife, a 9-year-old son and a 7-year-old son. Tran's estate sought recovery of wrongful-death damages that included \$250,000 for past medical expenses, \$4 million for lost earnings and benefits, and unspecified damages for Tran's pain and suffering. Tran's widow, Zhu Ai Chen, presented a derivative claim.

Result: During the day that preceded the scheduled selection of a jury, the parties negotiated a settlement, which was finalized via the guidance of mediator Ronnie Bernon Gallina, of Jams. The defendants' primary insurer tendered its policy, which provided \$2 million of coverage, and the defendants' excess insurer agreed to pay \$1.75 million, from a policy that provided \$25 million of coverage. Thus, the settlement totaled \$3.75 million.

Trial Information:

Judge: Ronnie Bernon Gallina

Editor's Comment: This report is based on information that was provided by plaintiffs' and defense counsel.

Writer Aaron Jenkins

Plaintiff argued supplier gave no warning of acetylene tank

Type: Decision-Plaintiff

Amount: \$2,079,792

State: Texas

Venue: Hidalgo County

Court: Hidalgo County District Court, 92nd, TX

Injury Type(s):

- *arm* - scar and/or disfigurement, arm
- *burns* - third degree
- *other* - scar tissue; physical therapy
- *hand/finger* - hand
- *surgeries/treatment* - skin graft

Case Type:

- *Products Liability* - Equipment; Failure to Warn; Industrial Machinery
- *Worker/Workplace Negligence* - Negligent Repair

Case Name: Howard Glen Oliver III v. D's Southern Supplier, LLC, No. C-5350-13-A

Date: April 28, 2015

Plaintiff(s):

- Howard Glen Oliver, III (Male, 60 Years)

Plaintiff Attorney(s):

- James P. Grissom; Law Office of James P. Grissom; McAllen TX for Howard Glen Oliver, III
- Francisco J. Rodriguez; Law Offices of Francisco J. Rodriguez; McAllen TX for Howard Glen Oliver, III

Defendant(s):

- D's Southern Supplier LLC

Defense Attorney(s):

- Kelly K. McKinnis; Law Office of Kelly K. McKinnis; McAllen, TX for D's Southern Supplier LLC

Facts:

On July 7, 2013, plaintiff Howard Glen Oliver III, early 60s, a semi-retired self-employed machinist and gun-repair technician, was using an acetylene torch to repair the bolt assembly on a high-powered rifle in his workshop, in Donna. The torch was attached to a tank, which could be taken back to the supplier when empty and exchanged for a full tank. While Oliver was using the torch, the tank leaked, and the gas ignited and exploded, severely burning Oliver's right arm and hand.

He had gotten the tank from D's Southern Supplier, LLC, a provider of welding and industrial equipment, which had repaired a leak in the tank before supplying it to Oliver.

Oliver sued the company, alleging that it failed to properly repair the leak. He also brought a claim under a theory of strict products liability, alleging the supplier failed to warn him that the tank was not properly repaired and was subject to leaks.

D's Southern had brazed a bronze patch onto the threads of the valve that screwed into the tank, because the threads were damaged or worn. Oliver claimed that the supplier either failed to braze the patch properly or used a patch that was too thin.

D's Southern's owner filed a general denial on behalf of the company. However, because the company did not have a lawyer, the court struck the defendant's pleadings, granted Oliver a default judgment on liability and set the case for an evidentiary hearing on damages.

An attorney entered an appearance for D's Southern before the hearing.

Injury:

Oliver went by ambulance to a local emergency room and was then airlifted to a hospital in San Antonio. He sustained third-degree burns to his right (dominant) hand and forearm.

Oliver spent four or five weeks in the hospital and underwent numerous skin grafts during that time. He had physical therapy for three or four months.

Oliver claimed he will continue to need pain medication, because the pain from his scars will worsen as the skin loses elasticity with age. His hand and forearm were badly scarred. His attorney also noted that his fingerprints were burned off, making it hard to pick up paper.

The paid or incurred medical bills were \$82,409.24. Oliver also claimed past and future physical pain and suffering, mental anguish, physical impairment and disfigurement.

The defense argued that the amounts sought by Oliver were arbitrary and not supported by evidence.

Result:

After the hearing on damages, the court awarded Oliver \$2,079,791.69.

Howard Glen Oliver, III

\$82,409 Personal Injury: Past Medical Cost

\$150,000 Personal Injury: Past Physical Impairment

\$500,000 Personal Injury: Punitive Exemplary Damages

\$150,000 Personal Injury: Past Disfigurement

\$100,000 Personal Injury: Future Disfigurement

\$100,000 Personal Injury: future mental anguish

\$500,000 Personal Injury: past physical pain and suffering

\$122,382 Personal Injury: prejudgment interest

\$250,000 Personal Injury: future physical pain and suffering

\$125,000 Personal Injury: past mental anguish

Trial Information:

Judge: Luis M. Singleterry

Trial Length: 1 hours

Post Trial: The defense filed a motion for new trial, which was overruled by operation of law.

Editor's Comment: This report is based on information that was provided by plaintiff's counsel. Defense counsel declined to contribute.

Writer John Schneider

Cutting Torch Lacking Safety Device Shot Fire at Welder

Type: Mediated Settlement

Amount: \$1,600,000

State: Pennsylvania

Venue: Philadelphia County

Court: Philadelphia County Court of Common Pleas, PA

Injury Type(s):

- *burns*

Case Type:

- *Products Liability*
- *Premises Liability - Fire*

Case Name: Gregory Borgeson v. Illinois Tool Works, Inc. v. Ronald C. Garrison, No. 0010-4713

Date: November 05, 2002

Plaintiff(s):

- Gregory Borgeson (Male, 37 Years)

Plaintiff Attorney(s):

- Eunice Trevor; Brigham and Trevor, P.C.; Philadelphia PA for Gregory Borgeson
- Martin K. Brigham; Brigham and Trevor, P.C.; Philadelphia PA for Gregory Borgeson

Plaintiff Expert(s):

- Brad Sevin M.D.; Psychiatric Trauma; Philadelphia, PA called by: Martin K. Brigham
- John Nelson; Design; Rochester, NY called by: Martin K. Brigham
- Daniel O. Hensell M.D.; Burn Medicine; Philadelphia, PA called by: Martin K. Brigham

Defendant(s):

- Ronald C. Garrison
- Illinois Tool Works, Inc.

Defense Attorney(s):

- Daniel S. Altschuler; Post & Schell, P.C.; Philadelphia, PA for Ronald C. Garrison
- Bruce Bieneman; Grand Rapids, MI for Illinois Tool Works, Inc.
- James Donohue; White and Williams LLP; Philadelphia, PA for Illinois Tool Works, Inc.

Defendant Expert(s):

- Steve Arndt Ph.D.; Forensic Engineering; Alexandria, VA called by: for Daniel S. Altschuler
- William Dougherty M.D.; Burn Medicine; Allentown, PA called by: for Daniel S. Altschuler
- Lawrence Matta Ph.D.; Forensic Engineering; Alexandria, VA called by: for Daniel S. Altschuler

Insurers:

- Nationwide Insurance Co.
- Self-insured

Facts:

Plaintiff Gregory Borgeson, 37, was using a "Tuf-Tony" cutting torch to disassemble a truck at his employer's junkyard in April 2000. As he lit the torch, the flame spread from the tip, up through the body of the torch, burning through the oxygen hose and erupting out the handle. Fire shot at him and he was burned on his chest and the upper left side of his body. Borgeson sued the manufacturer and designer of the torch, Illinois Tool Works, Inc. of Glenview, Ill., and the retailer of the torch, Ronald Garrison.

Borgeson claimed that the torch was defective in that it was not equipped with a "flashback" fire arrestor. Flashback fires are common in cutting torches, the plaintiff claimed, and the defendants took no steps to make the torch safer. Borgeson found an "Ask-the-Expert" column on Tool Works' own website in which the company touted the safety advantages of flashback arrestors on the torches.

The defense contested liability, arguing that arrestors are optional and that Borgeson knew of the dangers of flashback fire because he was burned in a similar accident four years earlier. The defense further alleged that the problem was not due to flashback at all, but rather oil in the torch resulting from contaminants in the propane. The plaintiff also acknowledged the oil, but said that it was not the cause.

Injury:

Borgeson sustained second- and third-degree burns to his chest, left arm and shoulder. He had a skin graft operation to the left shoulder.

Borgeson must work light duty and will never return to welding.

Result:

After two rounds of mediation facilitated by Tom Rutter of ADR Options, Inc. of Philadelphia, the parties settled for \$1.1 million in cash and \$500,000 to be placed in a structured settlement account.

Trial Information:**Judge:**

Sandra Mazer-Moss

Trial Length: 0

**Trial
Deliberations:** 0

Writer Dave Venino

Plaintiff claimed cutting torch caused electrical burns

Type: Settlement

Amount: \$225,000

State: New York

Venue: Erie County

Court: Erie Supreme, NY

Injury Type(s):

- *burns* - third degree; second degree
- *other* - neuropathy
- *wrist* - carpal tunnel syndrome
- *hand/finger* - hand
- *neurological* - nerve damage/neuropathy; nerve damage, radial nerve

Case Type:

- *Products Liability* - Equipment; Design Defect; Failure to Warn

Case Name: Michael Buck and Rebecca Buck v. Thermadyne, Tweco Arcair, Arcair Company, Rodgers Welding Supply, Inc., No. 1080/05

Date: December 11, 2008

Plaintiff(s):

- Michael Buck (Male, 43 Years)
- Rebecca Buck (Female)

Plaintiff Attorney(s):

- Robyn L. Blanchard; The Ballow Law Firm, P.C.; Buffalo NY for Michael Buck, Rebecca Buck

Plaintiff Expert(s):

- James Samuel McKnight Ph.D.; Electrical; Raleigh, NC called by: Robyn L. Blanchard
- Timothy O'Connor M.D.; Plastic Surgery/Reconstructive Surgery; Rochester, NY called by: Robyn L. Blanchard

Defendant(s):

- Arcair Co.
- Thermadyne
- Tweco Arcair
- Rodgers Welding Supply Inc.

Defense Attorney(s):

- Brian P. Fitzgerald; Law Office of Brian P. Fitzgerald; Buffalo, NY for Thermadyne, Arcair Co., Tweco Arcair, Rodgers Welding Supply Inc.

Defendant Expert(s):

- Mark A. Goodman M.D.; Orthopedic Surgery; Pittsburgh, PA called by: for Brian P. Fitzgerald
- August F. Manz; Welding; Union, NJ called by: for Brian P. Fitzgerald

Facts:

On Jan. 31, 2002, plaintiff Michael Buck, 43, a welder, was engaged in the normal course of his duties at County Line Store, in Akron. Buck was working in the garage bay, using a Thermadyne cutting torch to slice a piece of 0.25-inch-thick metal. The slice-cutting torch is a device that uses a Teflon/magnesium rod, which is ignited, kept burning by an oxygen supply, and burns at an extremely high temperature that allows the cutting to occur. While Buck was using the device, he sustained electrical burns of his left hand.

Buck sued Thermadyne and its subsidiaries, Tweco Arcair, Arcair Co. and Rodgers Welding Supply Inc. He alleged that the torch and rod were defectively designed and that the defendants failed to provide proper warnings of the hazards that could have stemmed from the torch's use.

Buck claimed that arcing occurred as a result of the cutting torch's ground wire being attached to the work piece that he was cutting and that this caused his electrical burns. Buck's expert electrical engineer determined that this was a dangerous practice that promotes arcing and that it was known by the defendants.

Buck contended that, after the accident, the defendants met at County Line Stone and opined that the ground should not be connected to the work piece, even though that practice is recommended in their literature. Plaintiff's counsel contended that the defendants failed to warn of the possibility of arcing prior to Buck's accident and that the improper design of the torch and rod made the product unfit for the purpose intended.

The defendants disputed Buck's allegations and contended that he did not sustain electrical burns from the cutting torch. Instead, they claimed that Buck was faced with a "stuck rod" situation, which is when the cutting rod sticks to the work piece, and that he purposely and intentionally used his left hand to pull the rod from the work piece. They claimed that this caused Buck to sustain a thermal burn, and not an electrical burn from arcing. In addition, the defendants argued that their literature stated that the product should not be run with a "continuous power supply" off a welding machine. Thus, defense counsel contended that Buck's own actions were the proximate cause of his injuries.

Injury: Buck sustained second- and third-degree burns of his left hand and distal radial nerve damage. He required carpal tunnel surgery and a left, open surgery of the forearm to determine the extent of his radial neuropathy.

Buck claimed that he suffers carpal tunnel syndrome and dysfunction of his left hand. He sought recovery of his past medical expenses and damages for his past and future pain and suffering. His wife presented a derivative claim.

Defense counsel disputed the cause of Mr. Buck's burn. He contended that Buck did not sustain an electrical burn from arcing, but rather a thermal burn from his negligent handling of the cutting torch and rod. The defendants' expert orthopedic hand surgeon opined that Buck, more likely than not, sustained thermal burns because there was no evidence of an exit wound.

Result: The parties negotiated a \$225,000 pretrial settlement. Of the total settlement, \$24,000 would be used to repay a workers' compensation lien.

Trial Information:

Judge: Joseph D. Mintz

Editor's Comment: This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

Writer Tim Heinz

Plaintiff sustained burns while using handheld torch

Type: Decision-Defendant

Amount: \$0

State: California

Venue: Federal

Court: United States District Court, Eastern District, San Diego, CA

Injury Type(s):

- *arm*
- *leg*
- *head - ear*
- *burns*
- *other* - loss of consortium; scar and/or disfigurement
- *surgeries/treatment* - skin graft

Case Type:

- *Products Liability* - Design Defect; Manufacturing Defect

Case Name: Andrew Shalaby and Sonia Dunn-Ruiz v. BernzOmatic, a division of Irwin Industrial Tool Company, and The Home Depot Inc., No. 3:07-cv-02107

Date: July 28, 2009

Plaintiff(s):

- Andrew Shalaby (Male)
- Sonia Dunn-Ruiz (Female)

Plaintiff Attorney(s):

- Andrew W. Shalaby; Law Office of Andrew W. Shalaby; El Cerrito CA for Andrew Shalaby, Sonia Dunn-Ruiz

Plaintiff Expert(s):

- Alison G. Vredenburg Ph.D.; Ergonomics/Human Factors; San Diego, CA called by: Andrew W. Shalaby
- Robert Anderson; Forensic Engineering; Tempe, CA called by: Andrew W. Shalaby

Defendant(s):

- The Home Depot Inc.
- Bernzomatic, a division of Irwin Industrial Tool Company Inc.

**Defense
Attorney(s):**

- Beth Schneider Naylor; Frost Brown Todd LLC; Cincinnati, OH for The Home Depot Inc., Bernzomatic, a division of Irwin Industrial Tool Company Inc.
- Shelley G. Hurwitz; Holland & Knight LLP; Los Angeles, CA for The Home Depot Inc., Bernzomatic, a division of Irwin Industrial Tool Company Inc.
- Doug Dennis; Frost Brown Todd LLC; Cincinnati, OH for The Home Depot Inc., Bernzomatic, a division of Irwin Industrial Tool Company Inc.

**Defendant
Expert(s):**

- Mike Ridley P.E.; Engineering; Medina, NY called by: for Beth Schneider Naylor, Shelley G. Hurwitz, Doug Dennis
- Timothy J. Myers Ph.D., C.F.E.I.; Fires & Explosions; Natick, MA called by: for Beth Schneider Naylor, Shelley G. Hurwitz, Doug Dennis
- Christine T. Wood Ph.D.; Labels & Warnings; Menlo Park, CA called by: for Beth Schneider Naylor, Shelley G. Hurwitz, Doug Dennis

Facts:

On April 21, 2006, plaintiff Andrew Shalaby, an attorney, was injured while using a handheld torch attached to a MAPP gas cylinder. The torch was manufactured by BernzOmatic, while the cylinder (labeled BernzOmatic) was manufactured by either Worthington Industries or Western Industries. Shalaby claimed that he was using the torch to light a campfire when he knelt down over the fire ring and depressed the button to ignite the flame. He allegedly heard a hissing sound, followed by a loud explosion as the cylinder broke apart.

Shalaby sued BernzOmatic, a division of Irwin Industrial Tool Company, and The Home Depot Inc., the retailer, for products liability. The cylinder manufacturers were brought in as third-party defendants.

Shalaby alleged that the handheld torch was defectively designed and/or manufactured. He claimed that his engineering expert concluded that the accident was caused by a defective braze joint in the gas cylinder. The product was unavailable at trial because camp rangers had discarded the torch after being told by the fire department that it need not be retained. The product's absence made comparison with other samples of the same model impossible. The camp rangers, however, testified as to the appearance of the cylinder immediately after the accident.

The defendants claimed that Shalaby's accident was caused by misuse and abuse of the handheld torch and cylinder. According to counsel for BernzOmatic and Home Depot, Shalaby presented inconsistent theories of what actually occurred on the day of the accident. The plaintiff initially told the park ranger and paramedics who responded to the scene that he kicked the canister into the campfire. Reportedly, paramedics and rangers were later told by bystanders that Shalaby banged the torch and cylinder on the ring around the fire pit.

The defendants moved to exclude the plaintiff experts on the grounds that they did not meet the minimum standards under Rule 702 and Daubert, as the testimony was neither reliable nor relevant to the subject incident. The defendants argued that without experts the plaintiffs were unable to establish a prima facie case.

The defense experts opined that the gas cylinder would have had to be subjected to extreme force in order to fail. The testimony given by the independent responders to the scene was consistent with that theory.

Injury: Shalaby was hospitalized for 21 days with burns to roughly 20 percent of his body, including his arms, legs and ears. He underwent multiple skin grafts, but alleged residual pain and scarring.

Shalaby's wife, plaintiff Sonia Dunn-Ruiz, sought damages for loss of consortium.

Result: In a summary judgment order, Judge Michael M. Anello found in favor of the defendants.

Trial Information:

Judge: Michael M. Anello

Post Trial: At press time, the case was pending review in the U.S. Court of Appeals for the Ninth Circuit.

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel and defense counsel.

Writer: Shannon Green