[*Comment:* For a similar ruling, see *Jeld-Wen, Inc. v. Gamble*, 501 S.E.2d 393 (Va. 1998), 17 PLLR 145 (Aug. 1998).]

INDUSTRIAL PRODUCTS & EQUIPMENT

Wood crusher: Explosion: Improper recommendation of refaced hammers: Improper hammer refacing: Burns: Settlement.

Gandy v. R.W. Mfg., Cal., Los Angeles County Super. Ct., No. VC022669, Nov. 20, 1998.

Shortly after refaced hammers were installed on a Williams Crusher and Pulverizer machine—used to crush and pulverize wood into sawdust in lumber plants—workers smelled smoke. When a worker opened the crusher's dust collection system doors to investigate, an explosion occurred. Plant workers Gandy, 47, Reyes, 34, and Estrada, 38, suffered second- and third-degree burns. Gandy suffered burns over 90 percent of his body; Reyes, over 20 percent of his body; and Estrada, over 15 percent of his body. Gandy's medical expenses totaled about $1.2 million; Estrada's, $150,000; and Reyes's, $100,000. Gandy, who had earned about $10 hourly, is unable to return to work. Reyes and Estrada, who each earned $8 hourly, required retraining in different occupations.

The workers sued the machine manufacturer and designer, alleging the machine was defectively designed in that it permitted dulled hammers to be either replaced or refinished. Plaintiffs asserted that the refinishing option was improper because hot metal could chip from refinished hammers and be sucked into the sawdust collection system, where the chips could cause the dust to smolder, creating an explosion hazard.

In addition, plaintiffs asserted the manufacturer had provided insufficient instructions for refacing the hammer. Plaintiffs learned that the welder who was refacing the hammers with buildup and hard face rods had asked the manufacturer for instructions on heating the hammers for refacing. In response, the manufacturer allegedly faxed instructions telling him to preheat the hammer to 150 degrees. Plaintiffs asserted that the welder incorrectly interpreted the instruction to mean 150 degrees Fahrenheit, when the proper temperature was 150 degrees Celsius.

Plaintiffs also sued the companies that had supplied the refacing rods, alleging their sales representative had recommended rods that were too hard, and, therefore, became brittle and chipped when the hammer was used. Suit against the welding company alleged its welder had been inexperienced and had misinterpreted the crushing machine manufacturer's hammer-heating instructions.

Plaintiffs also sued the dust collection system manufacturer, alleging the system was defective in that it lacked spark detectors. In addition, plaintiffs named the manufacturer of the machine's conveyor, alleging the conveyor lacked a magnetic metal detector to prevent metal scraps from entering the machine.

The parties settled for about $4.65 million, including about $3.72 million to Gandy and $929,500 divided equally between Reyes and Estrada. The welding company paid $1.6 million. The crushing machine and dust collection system manufacturers each contributed $1 million. The refacing rod suppliers added $972,500, and the conveyor manufacturer contributed $75,000.

Plaintiffs' experts included Naresh Kar, metallurgy, Garden Grove, Cal.; Steven Antolovich, welding procedures/metallurgic failure analysis, Moscow, Idaho; Robert Lowe, fire causation, San Juan Capistrano, Cal.; Edward Bennett, vocational rehabilitation, Santa Barbara, Cal., and Larry Miller, physiatry, Brentwood, Cal.

Defendants' expert witnesses included Mack Quan, mechanical engineering, Jerry Zaminski, metallurgy, and Eldon Knuth, fire causation, all of Los Angeles, Cal.

Gandy's Counsel:

Geoffrey S. Wells,
*Brian J. Panish,
*Browne Greene, all of Santa Monica, Cal.

Estrada and Reyes's Counsel:

Thomas Weaver, Tustin, Cal.
*Douglas Applegate, Irvine, Cal.

Latent injury in products case becomes manifest when plaintiff is on notice of causal connection between product exposure and injury.

Barnes v. Clark Sand Co., ___ So. 2d ___, No. 97-3331, 1998 WL 681261 (Fla. Dist. Ct. App. Oct. 5, 1998).

A Florida appellate court held that in a products liability case, a latent injury becomes manifest when a plaintiff is on notice that a causal connection exists between exposure to an allegedly defective product and an injury.

Here, a sandblaster who was exposed to silica dust from 1972 to 1974 had a lung removed in 1984. In 1992, the worker allegedly first learned that his lung problems were related to silicosis, but that diagnosis was not confirmed until 1995. He later brought a products liability action against the sand producers.

The trial court granted defendant summary judgment, finding the action eliminated under FLA. STAT. 95-031(2), which established a repose statute that eliminated products

liability claims filed more than 12 years after the product was sold to its original purchaser.

Reversing, the appellate court rejected defendants' contention that the statute bars claims for latent injuries. The court noted that in *Diamond v. E.R. Squibb & Sons, Inc.*, 397 So. 2d 671 (Fla. 1981), the state high court held the statute unconstitutional as applied to latent injury claims stemming from *in utero* diethylstilbestrol (DES) exposure. That court noted that applying the statute in such circumstances would have barred plaintiff's claim before her injuries materialized and, thus, barred her right of action before it ever existed.

The court here noted that subsequent decisions had applied this reasoning to cases alleging latent injuries from asbestos exposure. Further, the court rejected defendants' claim that *Diamond*'s reasoning had been overruled by subsequent case law upholding a medical negligence repose statute even where its application would foreclose a cause of action before it accrues.

Noting that the medical repose statute was enacted to deal with an overriding public necessity that the legislature determined could not be addressed in any other way, the court noted that the state high court had made no similar findings with respect to products liability actions involving latent injuries.

Accordingly, the court said knowledge of a possible connection between the infliction of injury and resultant symptoms is still necessary in a latent-injury products liability case. Moreover, manifestation of such an injury occurs when a plaintiff is on notice of a causal connection between product exposure and the injury. Finding such an inquiry posed a fact question that had not been resolved here, the court ruled summary judgment had been improper.

Nevertheless, citing uncertainty about *Diamond*'s continued validity in light of the subsequent medical negligence repose statute rulings, the court certified a question on the opinion's continued validity to the state high court.

Plaintiff's Counsel:

*Louis K. Rosenbloum, Pensacola, Fla.
*H. Guy Green, Marianna, Fla.
*Lance P. Bradley, Beaumont, Tex.

[*Comment:* In 1986, FLA. STAT. 95-031(2) was repealed.]

[Documents in this case are available through the Court Documents section at p. 58, courtesy of Mr. Rosenbloum.]

Your Case in *PLLR*

Have you recently won or settled a products liability case? The editors of *PLLR* encourage you to share your news with other readers. To submit cases for possible publication, fill out the form on the back cover of this issue and return it to the address provided. Or fax the form to *PLLR* Editor Heidi Griffin at (202) 965-0030.

Hopper: Forklift: Worker crushed: Improper dumpster latch design, location of forklift controls: Wrongful death: Settlement: Verdict.

Brandon v. Galbreath, Inc., Miss., Lowndes County Cir. Ct., No. 94-013-CV1, Aug. 1998.

Brandon, 48, was using a Yale forklift to empty a Galbreath self-dumping hopper-dumpster. While trying to trip the dumpster latch, Brandon climbed partially out of the forklift cab. His foot reportedly slipped and activated the mast tilt control lever. Brandon was trapped between the forklift's mast and overhead guard. He suffered a crushed pelvis and torn bladder and died about six days later. His medical expenses totaled about $30,500. He is survived by his wife and one adult daughter. He had worked as a forklift operator earning about $40,000 annually.

Brandon's widow sued the dumpster manufacturer, alleging defective design. Plaintiff argued the dumpster could not be emptied in a safe manner and should have been equipped with a latch mechanism that could be operated from the ground.

Plaintiff also sued the forklift manufacturer, alleging Brandon's actions had been foreseeable, and, consequently, (1) the tilt control levers should have been relocated to the seat deck or (2) the forklift should have been equipped with a safety device to prevent inadvertent operation of the levers.

In addition, plaintiff named the company that sold the dumpster and forklift as a system, alleging it had (1) failed to provide instructions on how to operate the products as a system and (2) shipped the dumpster without on-product warnings.

Defendants countered that Brandon's use of the products had been unforeseeable and that they had never received reports of any similar injuries.

The seller settled before trial for $35,000.

The jury awarded $3.5 million, allocating fault at 40 percent against the dumpster manufacturer, 30 percent against the forklift manufacturer, 10 percent against Brandon, and 5 percent against the seller. The remaining 15 percent of fault was allocated against Brandon's employer, reportedly for failing to provide safe equipment and a safe workplace. Accordingly, the verdict was reduced to $2.45 million.

Plaintiff's mechanical engineering experts were Richard Forbes, Starkville, Miss., and George Greene, Tyler, Tex. Defendants' mechanical engineering experts were Edward Caulfield, Naperville, Ill.; Walter Gerardi, Galesburg, Mich.; and Richard Krenick, Oklahoma City, Okla., who also served as a human factors expert.

Plaintiff's Counsel:

*David Baria, Jackson, Miss.
*David O. Kemp, Dallas, Tex.
R. David Kaufman, Jackson, Miss.
Joseph N. Studdard, Columbus, Miss.