

Machine's design, lack of warnings blamed for fatal accident

August 22, 2008

Amount:	\$0	Type:	Settlement
Court:	Nueces County District Court, 94th, TX		
Case Name:	Pauline C. Duron, Individually and as Independent Executrix of the Estate of Manuel Aldape Duron Jr., Deceased; Sandra R. Gonzalez; Roel Duron; and Luis Duron v. The Charles Machine Works Inc. and Butler Rental & Sales Inc., No. 07-1806-C		
Plaintiff Attorney(s):	<ul style="list-style-type: none">• Joseph E. Ritch; Wigington & Rumley, L.L.P.; Corpus Christi TX for Pauline C. Duron, Manuel A. Duron Jr., Sandra R. Gonzalez, Roel Duron, Luis M. Duron		
Defense Attorney(s):	<ul style="list-style-type: none">• Will W. Pierson; Royston, Rayzor, Vickery & Williams LLP; Corpus Christi, TX for Butler Rental & Sales• Robert D. Tomlinson; Tomlinson & O'Connell P.C.; Oklahoma City, OK for The Charles Machine Works Inc.• Douglas E. Chaves; Chaves, Resendez & Rivero, LLP; Corpus Christi, TX for The Charles Machine Works Inc.		
Facts:	<p>On April 26, 2006, plaintiffs' decedent Manuel Aldape Duron Jr., 72, was monitoring a construction project near the intersection of Kostoryz and Holly Road in Corpus Christi. Part of the project was to dig a ditch, so a RT40 Ditch Witch trencher was rented from Butler Rental & Sales to complete the project. The machine was manufactured by The Charles Machine Works. As the ditch was being trenched by the RT40 Ditch Witch trencher, Duron allegedly checked to measure the depth of the trench and slipped in. The trencher's boom dragged Duron under, killing him.</p> <p>Pauline C. Duron, Duron's wife and independent executrix of his estate, and his three adult children, Sandra R. Gonzalez, Roel Duron and Luis M. Duron, sued Butler Rental & Sales and The Charles Machine Works. The plaintiffs alleged the RT40 Ditch Witch trencher lacked physical guarding and bystander presence sensory technology that was available.</p> <p>The plaintiffs also argued that The Charles Machine Works failed to give proper and adequate warnings regarding the dangers of the machine. They alleged the company did not utilize a safer alternative design other than the one used, which was economically and technologically feasible.</p> <p>The plaintiffs further maintained Butler Rental failed to properly advise on the availability of accessories and equipment that would have prevented the accident. The plaintiffs also asserted Butler Rental did not provide sufficient operational instructions.</p> <p>The Charles Machine Works argued that Duron was not measuring the depth of the trench; that he and others were well aware of the dangers involved in the operation of a trencher; and that there was no evidence of obstructed view or safety devices available for the trencher.</p> <p>Butler Rental contended that it owed no duty to offer training or accessories that could have prevented the accident.</p>		
Injury:	Duron died at the age of 72. He is survived by his wife and three adult children.		
	The plaintiffs sought damages for the conscious pain and suffering and mental anguish that the decedent sustained prior to death, and for the reasonable and necessary medical, funeral and burial expenses.		
Result:	The case was settled for a confidential amount with the assistance of mediator Andrew J. Lehrman.		
Judge:	Bobby Galban, Andrew J. Lehrman		