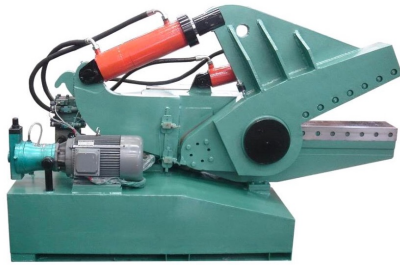


HEUBECK LAW, P.C.

Knowledge | Experience | Results



Alligator Shears

Alligator Shears function like giant unsharpened scissors with the lower blade fixed in a horizontal position. As the pivoted upper blade descends, it passes the lower blade, causing it to shear anything in its path.

ANSI

In 1974, the American National Standards Institute published ANSI Z.268.1, Safety Requirements for Metal Scrap Processing Equipment.



Under 4.3, Safeguards for Alligator Shears: "A guard shall be provided at the point of operation to prevent the operator from inserting his hands into the area of operation."



Metal Scrap Processing

Plaintiff was employed as a helper at a metal scrap yard. On his first day operating an unguarded Alligator Shear, he slipped and actuated the foot pedal controls while his arm was in the path of the blade. He suffered a crushing injury to his right arm and a partial amputation of his left thumb.

Cal-OSHA Violations

The Employer was cited for several serious violations of the California Safety Orders. Although the shear had been purchased at auction without a guard, this did not entitle the Employer to operate it in such a condition. The Employer had a duty to guard it, under Title 8 of the CCR, regardless of how they acquired it and regardless of its original condition.

Employer Negligence

The Employer had operated the shear without a guard for over twenty years. In addition to the statutory violations, the Employer had received a written notice from the shear manufacturer - *several months before the accident* - that the shear must be guarded and that a guard could be obtained from the manufacturer.

Clearly, the Employer contributed to the accident.

OSHA Violations

Labor Code §6304.5 permits a *negligence per se* instruction in a civil action when there was a violation of the OSHA standards.

Shareholders Liability

Under Corporations Code §2011, shareholders receiving distributions from a dissolved corporation are liable for any cause of action against the corporation, up to the amount distributed.

Understanding OSHA

John C. Heubeck, Esq. has litigated hundreds of industrial injury cases over the past 30 years. When he served as an Assistant Attorney General, he prosecuted serious injury and death cases on behalf of OSHA. That experience has always helped him in evaluating the employer's contribution to the injury, establishing the defendant's liability, and maximizing the client's recovery. Most plaintiff lawyers - *and defense lawyers* - lack a regulatory background and are usually at a mutual disadvantage when handling such cases.

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If you need assistance with an industrial accident case, contact us. We have the knowledge and experience to make a difference.

Why Was the Equipment Manufacturer Liable?

The Alligator Shear Design

The shear had been manufactured in 1980, long *after* the equipment industry had recognized the need for a point of operation guard. Although the manufacturer did produce a guard for the shear, it was only offered as an accessory. The original purchaser did not buy one. Several years later, the manufacturer included guards as standard equipment. Eventually, the shears were sold with guards featuring a disabling interlock switch.

The Manufacturer's Liability

The shear was defective the day it was built because it failed to incorporate a non-removable, point of operation guard. While the Employer was negligent, such negligence was foreseeable since operating the shear without a guard enhanced productivity. The Manufacturer did seek to correct the defect, but they never offered the guard free of cost, and they continued to sell the Employer replacement parts, without confirming that a guard had been installed. And, they never issued a recall for the shear.

Pressure Applied to the Manufacturer's Carrier

The Manufacturer had discontinued operations but had not yet dissolved. We were initially told that they had \$1,000,000 in coverage, but later discovered a \$1,000,000 umbrella policy. After the lawsuit was filed and served, the Manufacturer dissolved the business. When we moved to name the shareholders and seize the assets, the carrier agreed to a policy limits demand. We then assumed the duty to defend against the Employer's lien.

The Plaintiff-in-Intervention

The Work Comp carrier had paid over \$1,300,000 in medical expenses and filed a complaint-in-intervention, seeking to recover their payments. They received nothing. We explained that Plaintiff was entitled to a *negligence per se* jury instruction because of the OSHA violations, informing the jury that the Employer was liable as a matter of law. The Employer would have to argue that the Manufacturer should share the liability for failing to anticipate the Employer's gross indifference to safety. Such an argument - *coming from the Employer* - was unlikely to succeed.