

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

Elaine Beaurivage,)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-CV-132-P-S
)	
Automation Techniques, Ltd.,)	
Defendant.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before the Court is Plaintiff’s Motion for Entry of Final Default Judgment (Docket #12). The Court held an evidentiary hearing on December 2, 2004, at which it received documentary evidence and heard the testimony of Plaintiff Elaine Beaurivage. Following the hearing, the Court requested that Plaintiff’s Counsel submit proposed findings of fact and conclusions of law. Plaintiff’s Request for Findings of Fact and Rulings of Law (Docket #21) was filed on December 21, 2004. In accordance with Federal Rules of Civil Procedure 52 and 55(b), the Court has reviewed all of the evidence presented and now GRANTS Plaintiff’s Motion for Entry of Default Judgment. Specifically, the Court makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

The Parties

1. Elaine Beaurivage (“Plaintiff”) is a citizen of the State of Maine and resides at 111 Country Club Road, #2, Sanford, Maine.

2. Automation Techniques, Ltd. (“Defendant”) is a United Kingdom entity with its principal place of business at Solutions House, Unit H, Boyn Valley Industrial Estate, Boyn Valley Road, Maidenhead, Berkshire SL6 4EJ, England.

Manufacture of the Laminating Machine

3. Defendant manufactured and sold a lamination system (the “Laminator”) to CYRO Industries (“CYRO”) of Sanford, Maine.

4. At the time of manufacture and distribution, the Laminator was defective and unreasonably dangerous because (i) the in-running nip of the rolls was not guarded so as to prevent the system users’ hands from being drawn into the rolls; (ii) the rolls were fixed rather than floating such that a hand could be pulled into the rolls and severely injured; and (iii) there were no adequate warnings of these conditions. (See Pl. Ex. 1, Tab 7.)

The Day of the Injury

5. On May 10, 2002, Plaintiff was 48 years old.

6. Plaintiff was employed by CYRO as a “Multi-operator.”

7. CYRO had trained Plaintiff to operate the Laminator.

8. On May 10, 2002, Plaintiff was operating the Laminator in a manner consistent with her training.

9. As a result of the defective and unreasonably dangerous condition of the Laminator, the Laminator pulled Plaintiff’s right hand into the rolls.

10. Plaintiff saw her hand being pulled into the Laminator.

11. Plaintiff felt her hand being mangled, and she felt severe, immediate pain.

12. Plaintiff saw her blood and flesh spew from the Laminator.

13. Plaintiff, in a state of terror, feared that her hand and then her arm would be pulled into the machine and that she would die.

14. The Laminator contained no automatic release so Plaintiff was forced to pull her hand out of the Laminator.

15. Plaintiff looked at her hand and saw mangled flesh, shattered bones, and blood.

16. Plaintiff remained conscious and aware of her situation, although she was light-headed.

17. Plaintiff waited in agonizing pain for the ambulance to arrive.

Medical Treatment

18. The ambulance transported Plaintiff to Maine Medical Center.

19. Once at the hospital, Plaintiff's clothes were cut off.

20. Plaintiff was alone and frightened while in the emergency room until her son arrived later that day.

21. Plaintiff was concerned about the severity of her injury and how much of her right hand she would lose.

22. Plaintiff suffered a complete degloving of her right hand and only a small part of the fifth finger distal skin aspect remained intact.

23. The skin on her right hand had been pulled off up to the wrist, her hand was fractured, and portions of her hand needed to be amputated.

24. During this initial 15-day hospitalization, plaintiff underwent six painful surgeries.

25. Plaintiff's skin was surgically removed from her thigh and grafted onto her hand.

26. A pocket was cut into Plaintiff's groin, and her right hand was elevated and inserted into this groin flap.

27. Plaintiff endured numerous, painful dressing changes of the wounds, many of which required general anesthesia.

28. Plaintiff was connected to I.V.s for the majority of her hospital stay which was uncomfortable and made sleeping nearly impossible.

29. Plaintiff suffered night terrors throughout her hospitalization.

30. Plaintiff suffered pain not only in her right hand that had been mangled in the Laminator but also in the groin area where a flap had been surgically created and in the thigh area where skin had been removed for grafting onto the hand.

31. During Plaintiff's 15-day hospitalization, Plaintiff's son attended his senior prom. Plaintiff was unable to enjoy this important milestone with her son due to her hospitalization.

32. Plaintiff could do nothing independently during this hospitalization. She required assistance to complete all activities of daily life.

33. Plaintiff underwent five additional surgeries subsequent to this 15-day hospitalization.

34. Plaintiff underwent a total of 11 surgeries. (See Pl. Ex. 1, Tab 1.)

35. Plaintiff engaged in physical therapy for approximately 1.5 years.

36. Following each of the 11 surgeries, Plaintiff endured a recuperation period that was painful and limiting of her independence.

Past, Present & Future Medical Bills

37. To date, Plaintiff has incurred medical bills totaling \$66,770.22. (See Pl. Ex. 1, Tab 4.)

38. Plaintiff will incur future medical bills for treatment of her injured hand.

39. Plaintiff may require future surgeries.

40. Plaintiff likely will develop brittle bones in her right hand. As the bones become brittle, they are more susceptible to breakage and will require treatment.

41. As a result of the right hand injury, Plaintiff has been required to rely on her left hand to complete tasks. Plaintiff's over-compensation with the left hand and arm has resulted in documented pain, especially in the left elbow. (See Pl. Ex. 1, Tabs 1 & 2.)

42. Plaintiff will incur future medical bills for treatment of conditions brought on by the injury to her right hand.

Loss of Independence & Dignity Immediately Following Injury and Presently

43. Plaintiff's hand was immobilized in a groin flap for four weeks.

44. Plaintiff required assistance in all aspects of daily living while her hand was immobilized in the groin flap, including maintaining her personal hygiene.

45. Plaintiff could not use a bathroom independently, she could not shower independently, dress herself, etc.

46. Particularly upsetting for Plaintiff was the fact that at her son's graduation, she had to be accompanied to the bathroom and assisted in all aspects of this personal activity.

47. The presence of the groin flap made sleeping particularly difficult and uncomfortable.

48. Plaintiff can no longer engage in the same activities that she had enjoyed prior to the accident.

49. Plaintiff still cannot dress herself independently since certain aspects of her wardrobe, as a woman, require the use of two hands, e.g., she cannot put on jewelry, button jeans, tie shoes, groom her hair, etc.

50. Plaintiff cannot enjoy leisure activities as she once had since she lacks the use of her right hand and because certain of these activities now pose an inherent danger.

51. Plaintiff was an avid cook, but cooking with one functional hand is not only difficult, but at times, hazardous. Since injuring her hand, Plaintiff cannot hold a bowl or pan steady in order to mix. Plaintiff also, due to the significant loss of feeling in her right hand, has burned her hand while holding onto pans or placing her hand next to heat sources since she cannot feel the pain sensation.

52. Plaintiff previously golfed and can no longer enjoy this sport. Thus, she has been forced to sell her clubs.

53. Because she was a right-handed writer prior to the accident, Plaintiff had to learn how to write with her left hand. She still has difficulty writing.

54. Due to lack of circulation, Plaintiff's right hand gets cold at temperatures below 70 degrees and is prone to frostbite. As a result, Plaintiff can no longer enjoy outdoor winter sports, such as snowshoeing.

55. Plaintiff requires assistance with a multitude of everyday tasks. She feels embarrassed and humiliated when she forced to ask her elderly friends for assistance.

Permanent Loss of Use of Right Hand

56. The injury sustained was to the Plaintiff's right hand.

57. Plaintiff is right-hand dominant.

58. According to a permanent impairment evaluation completed by Dr. Therese K. White, the total impairment to Plaintiff's right hand is 90%; Plaintiff's upper extremity impairment is 81%; and Plaintiff's whole person body impairment is 52%. (See Pl. Ex. 1, Tab 3.)

Scarring & Effect on Personality

59. Plaintiff suffered severe and permanent injuries including, but not limited to, a “crush degloving” of her right hand. (Id.)

60. Even after multiple reconstructive surgeries, Plaintiff’s hand appears contorted and mangled. (See Pl. Ex. 1, Tab 5.) As a result, it has attracted the gazes and comments of strangers.

61. Plaintiff no longer is uninhibited in public settings, such as church, grocery stores, or gatherings. Where she once would extend her hand and give a hardy shake or participate in group prayer, now she withdraws and covers her hand in order to conceal her wound.

62. Not only is Plaintiff’s hand scarred, but so too is her thigh area. Skin was removed from Plaintiff’s thigh and grafted onto her hand. The area from where the skin was removed is scarred. The area is unsightly and visible when Plaintiff wears shorts.

63. Plaintiff also bears a scar in her groin area where a flap was created to promote the healing of what remained of her hand.

64. Plaintiff is self-conscious of these scars. As a result of her scars, she is more apprehensive of interactions with the people around her and has changed some of her mannerisms.

Lost Wages & Lost Earning Capacity

65. CYRO hired Plaintiff on November 2, 1981.

66. At the time of this accident, Plaintiff was earning \$14.30, and her average weekly wage was \$668.74. (See Pl. Ex. 1, Tab 8.)

67. From May 10, 2002 until July 21, 2003, Plaintiff could not work at all. Plaintiff's lost wages for this 62-week period total approximately \$41,461.88. (Id.)

68. From July 21, 2003 to September 1, 2003, Plaintiff could work only half-time, i.e., 20 hours per week. Plaintiff's lost wages for this 6-week period total approximately \$2,006.22. (Id.)

69. To date, Plaintiff has sustained total lost wages of approximately \$43,468.10. (Id.)

70. Plaintiff's ability to seek employment at a manufacturing facility other than CYRO is extremely limited because of her inability to utilize her hand.

71. Due to a lack of other employment options that could accommodate Plaintiff's experience and impairment, Plaintiff reluctantly returned to work at CYRO despite suffering from anxiety and post-traumatic stress disorder.

72. To date, Plaintiff continues to work for CYRO in a position created for her.

73. Although Plaintiff returned to work at CYRO, she earns less than she did before the accident.

74. Prior to the accident, in addition to Plaintiff's hourly wage, Plaintiff worked overtime and earned time and one-half. In Plaintiff's current position, overtime is not available.

75. Plaintiff will suffer a loss of earning capacity for the remainder of the time that she is a member of the workforce and subsequently when retirement and Social Security benefits are computed.

II. CONCLUSIONS OF LAW

76. Defendant negligently failed to provide a safe design for the Laminator.

77. Defendant negligently failed to provide adequate warning of the defective and unreasonably dangerous condition of the Laminator.

78. Defendant, by the sale of the Laminator, impliedly warranted that the Laminator was reasonably fit for the purpose intended.

79. Defendant breached the implied warranty by failing to provide a safe design of the Laminator.

80. Defendant breached the implied warranty by failing to provide adequate warning.

81. Defendant is liable pursuant to 14 M.R.S.A. § 221.

82. Defendant was the seller of the Laminator which was, at the time of sale, in a defective condition and unreasonably dangerous to the user thereof.

83. Defendant reasonably expected that a person such as Plaintiff would use the Laminator.

84. Defendant was engaged in the business of selling laminating systems and expected such laminating systems to reach the user without significant change in the condition in which it was sold.

III. CONCLUSION

On the basis of the above findings and conclusions, the Court GRANTS Plaintiff's Motion for Entry of Final Default Judgment (Docket #12) and hereby ORDERS that Judgment on behalf of Plaintiff be entered in the amount of \$1,110,238.32.

SO ORDERED.

/s/ George Z. Singal
Chief United States District Judge

Dated this 4th day of January 2005.

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