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**DATABANK**

## **Jury Verdicts-- 9/26/02**

September 26, 2002

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**Product liability - backhoe - design defect in window-locking mechanisms - defense verdict on liability**

**Frank and Emily Derogatis v. Sims Manufacturing Co., Inc.; and BCP Construction Products, an affiliate of Koehring Cranes and Excavators, Inc. 26516/98 9-day trial Verdict 7/8/02 Nassau Supreme**

Judge: Ira B. Warshawsky

Verdict: Defense verdict on liability (5/1). Oral post-trial motions were denied. Jury: 4 male, 2 female.

Pltf. Atty: Perry Pazer of Pazer & Epstein, Manhattan

Def't. Atty: Steven L. Sidney of Ahmuty, Demers & McManus, Albertson, for Sims

**Vincent A. Nagler of Callan, Koster, Brady & Brennan, Manhattan, for BCP Construction**

Facts: Plaintiff, a 47-year-old heavy equipment operator, brought this action for injuries he suffered on 12/9/96 while working at a sewer construction job site in Flushing. Plaintiff testified that he was operating a backhoe manufactured by defendant Koehring at the time. He testified that the cab, manufactured by defendant Sims, contained a back window, which he secured in the overhead position, and that he had leaned out the back of the cab to see better while breaking up concrete. He claimed that the vibration of the machine caused the 35-lb window to strike him on the head and back, pinning him. Plaintiff brought this action for strict product liability, claiming improper design. Specifically, plaintiff claimed that the safety lock mechanisms were improperly designed. Plaintiff further claimed that one of the locking mechanisms was broken off as the result

of an improper design. Defendants' expert, the design engineer for defendant Sims (now Angus-Palm), testified that these locking mechanisms (two spring-loaded barrel bolts and one tri-mark latch) were known and accepted in the industry, and claimed that if they are used properly, the window could not come down. Defendants contended that it was impossible for the accident to have happened as plaintiff described and argued that plaintiff did not properly secure the locking mechanisms. Defendants argued that if any of the mechanisms were missing, they were either removed by Tully Construction, plaintiff's employer, or were not repaired properly. Defendants further argued that there were no warranty complaints, or complaints in the field of this type of accident, and denied that there was any design defect. The jury found that the machine was defective, but found that it was not defective at the time of manufacture. The machine had been in use for 6 years prior to the accident and it was inadequately maintained.

Injuries: (not before the jury) herniated cervical discs at C2-3, C3-4, C6-7, herniated lumbar disc at L3-4; bulging thoracic and lumbar discs at C7-T1, T12-L1, L1-2, L4-5, L5-S1, and syrinx at C-6; cervical and lumbar radiculopathy; post-concussion syndrome; post-traumatic stress disorder with anxiety and depression; torn rotator cuff requiring surgery. Plaintiff never returned to work and currently receives Social Security disability payments. Demonstrative evidence: photographs of the equipment and of the window; an exemplar latch and tracking mechanism and a window frame.

No offer; demand: \$2,500,000. Jury deliberation: 1½ days. Carriers: Kemper for Sims; Koehring is self-insured.

Pltf. Expert(s): Paul Glasgow, P.E., forensic engineer, Valley Stream.

Def't. Expert(s): Roger Atherton, Chief Design Engineer, Angus-Palm Canada (formerly Sims Manufacturing Co., Inc.); Norman Hargreaves, Chief Safety Engineer for BCP.

*Compiled by Quincy M. Gibbs, Newsday Business Desk.*

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