

IN THE WASHINGTON COUNTY COURT OF COMMON PLEAS
MARIETTA, OHIO

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MARIETTA, OHIO
MAY 20 11 2: 52

Estate of David Lightfritz
Willard Lightfritz, Administrator
805 Leonard Avenue
Belpre, Ohio 45714

Plaintiffs,

v.

Marietta Industrial Enterprises, Inc.
17943 State Route 7
Marietta, Ohio 45750,

Defendant.

Civil Action No.: 12 OT 103

Judge:

BOYER

INITIAL DISCOVERY REQUESTS
ATTACHED HERETO

COMPLAINT

FACTS

1. David Lightfritz, deceased, was a resident of Washington County, Ohio and died on March 30, 2011.
2. Willard Lightfritz is the duly-appointed Administrator of the Estate of David Lightfritz, Washington County Probate Court Case No. 2011 ES 166.
3. The Defendant, Marietta Industrial Enterprises, Inc. is an Ohio corporation and operates an industrial facility at 17943 State Route 7, Marietta, Ohio.
4. On March 30, 2011, David Lightfritz was an employee of Marietta Industrial Enterprises, Inc.
5. On that date, David Lightfritz was working in the Marietta Industrial Enterprises rebay building where he was performing his regular employment duties.
6. As was his routine, David Lightfritz fed boxes, paper, bottles, and other recyclable material in to a Morbark Mor-Screen trommel, which is a large machine that tumbles and separates materials for recycling.

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7. The Morbark Mor-Screen trommel was unsafe and violated multiple, specific safety regulations in at least the following particulars:
 - A. The revolving drum on the trommel was not guarded by enclosures that interlocked with the drive mechanism so that the drum could not revolve unless the enclosure was in place. In fact, Marietta Industrial Enterprises, Inc. had removed part of the top section of the infeed hopper which guarded entry into the revolving drum of the Morbark Mor-Screen trommel in violation of 29 C.F.R. 1910.212(a)(4).
 - B. Marietta Industrial Enterprises, Inc. failed to utilize a lockout/tagout procedure as it pertained to the isolation, blocking, and release of hazardous hydraulic, electrical, and kinetic energy for the Morbark Mor-Screen trommel in violation of 29 CFR 1910.147(c)(4)(i).
 - C. Marietta Industrial Enterprises, Inc. failed to use lockout/tagout devices on the Morbark Mor-Screen trommel in violation of 29 CFR 1910.147(d)(4)(i).
 - D. Marietta Industrial Enterprises, Inc. failed to provide training to its employees on the safe application and usage of lockout/tagout programs in violation of 29 CFR 1910.147(c)(7)(i).
8. At approximately 2:10 p.m., a truck driver for Rumpke Trash Service drove a garbage truck into the rebay building.
9. David Lightfritz used a skid steer loader to unload a bale of recyclable material from the garbage truck into the trommel's infeed hopper.

10. As a direct and proximate result of the defective and dangerous condition of the Morbark Mor-Screen trommel, David Lightfritz was pulled into the trommel barrel where he suffered severe pre-mortem injuries and died.

CLAIM ONE
EMPLOYER INTENTIONAL TORT
O.R.C. § 2745.01

11. The Plaintiff incorporates paragraphs 1 through 18 as if fully rewritten.

12. Defendant Marietta Industrial Enterprises, Inc., through its management and employees, had, at all relevant times, at least the following duties to David Lightfritz:

- A. The duty to furnish safe employment.
- B. The duty to furnish a safe place of employment.
- C. The duty to use safety devices and safeguards.
- D. The duty to use methods and processes reasonably adequate to render safe employment and safe places of employment.
- E. The duty to do every other thing reasonably necessary to protect the life, health, safety, and welfare of employees like David Lightfritz.
- F. The duty to properly maintain its equipment, including the Mor-Screen trommel.
- G. The duty to guard the Mor-Screen trommel through the use of an enclosure which was interlocked with the drive mechanism so that the drum could not revolve unless the enclosure was in place.
- H. The duty to ensure that locks/tags were applied to the energy isolation points of the Morbark Mor-Screen trommel.

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I. The duty to provide adequate training to David Lightfritz.

13. Defendant Marietta Industrial Enterprises, Inc., through its management and employees, breached its duties to David Lightfritz and committed such breaches with the intent to injure another or with the belief that the injury was substantially certain to occur, in at least the following ways:

J. Failing to furnish safe employment.

K. Failing to furnish a safe place of employment.

L. Failing to use safety devices and safeguards.

M. Failing to use methods and processes reasonably adequate to render safe employment and safe places of employment.

N. Failing to do every other thing reasonably necessary to protect the life, health, safety, and welfare of employees like David Lightfritz.

O. Failing to properly maintain its equipment, including the Mor-Screen trommel.

P. Failing to guard the Mor-Screen trommel through the use of an enclosure which was interlocked with the drive mechanism so that the drum could not revolve unless the enclosure was in place.

Q. Failing to ensure that locks/tags were applied to the energy isolation points of the Morbark Mor-Screen trommel.

14. Moreover, Marietta Industrial Enterprises, Inc., through its management and employees, deliberately removed safety guards, evidencing its knowledge that injury or death was substantially certain to occur.

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15. Specifically, Marietta Industrial Enterprises, Inc. removed the safety guard “of the top section of the infeed hopper which guarded entry into the revolving drum of the Mor-Screen trommel, model PT727, serial no. 32168, thereby exposing employees to be caught in the hazard.”
16. In fact, the United States Occupational Safety and Health Administration (“OSHA”) cited Marietta Industrial Enterprises, Inc. for this safety violation.
17. Moreover, Marietta Industrial Enterprises, Inc., failed to ensure that the trommel would be de-energized and locked out.
18. OSHA characterized these safety violations as “willful.”
19. Furthermore, another Marietta Industrial Enterprises, Inc. employee, Mia Clark, has reported that David Lightfritz entered the trommel while the machine was off. Thereafter, according to Mia Clark, Greg Whitacre and David Robinson, fellow employees, turned the machine back on—ostensibly an intentional act.
20. Based upon the OSHA citations and statements of the fellow employees, it is clear that Marietta Industrial Enterprises acted with an intentional disregard for employee safety, and in fact, acted with the belief of injury or death was substantially certain to occur.

CLAIM TWO
SURVIVAL OF ACTION
O.R.C. § 2305.21

21. The Plaintiff incorporates paragraphs 1 through 20 as if fully rewritten.
22. As a direct and proximate result of the intentional actions of Defendant Marietta Industrial Enterprises, Inc., David Lightfritz sustained unnecessary injuries,

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experienced substantial conscious pain and suffering, incurred medical bills, and ultimately died as a result of his injuries.

23. Consequently, the Estate of David Lightfritz is entitled recover damages on his behalf, per O.R.C. § 2305.21.

CLAIM THREE
WRONGFUL DEATH
O.R.C. § 2125.02

24. The Plaintiff incorporates paragraphs 1 through 23 as if fully rewritten.

25. David Lightfritz died as a result of the injuries sustained on March 30, 2011, resulting from the conduct of the Defendant.

26. Willard Lightfritz, Administrator of the Estate of David Lightfritz, brings this action for the benefit of the statutory beneficiaries as defined in O.R.C.

§ 2125.02(A)(1).

27. Willard Lightfritz seeks damages for the wrongful death of David Lightfritz including, but not limited to, burial expenses, loss of society, and mental anguish suffered by the surviving next of kin.

CLAIM FOUR
MALICE

28. The Plaintiff incorporates paragraphs 1 through 27 as if fully rewritten.

29. On March 30, 2011, Marietta Industrial Enterprises, through its management, had specific knowledge that there were specific potential hazards associated with the trommel in which David Lightfritz had died.

30. Despite this specific knowledge, Marietta Industrial Enterprises, Inc., through its management, continued to maintain current operations with the knowledge that injury was substantially certain to occur.

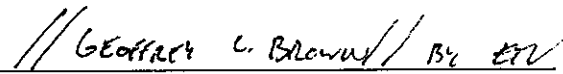
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Respectfully submitted,



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6. For each expert witness Defendant will call to testify at the trial of this matter, state the following information:

- a. The expert's name, address, telephone number, and area of expertise;
- b. The subject matter upon which the expert is expected to testify;
- c. The substance of the facts and opinions to which the expert is expected to testify; and
- d. A summary of the grounds for the expert's opinions.

Answer:

7. For each fact witness Defendant will call to testify at the trial of this matter, state the following information:

- a. The witness name, address, telephone number, and title or;
- b. The subject matter upon which the witness is expected to testify;

Answer:

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8. Identify by name and contact information all parties that the Defendant alleges the Plaintiff failed to join in this action. State why the Defendant asserts that each party identified is necessary to the adjudication of this litigation.

Answer:

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Requests for Production of Documents and Tangible Items

1. Produce a full copy of all documents, including correspondence, internal memoranda (including internal electronic mail), or incident reports that in any way deal with the incident in which David Lightfritz died on March 30, 2011.

Response:

2. Produce a full copy of any internal safety policies regarding use of trommels at Marietta Industrial Enterprises, Inc. effective on March 30, 2011.

Response:

3. Produce any and all statements of any witnesses or employees regarding the subject incident of March 30, 2011 in the possession of the Defendant or its representatives or insurers.

Response:

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4. Produce the curriculum vitae of each expert witness identified in response to Plaintiffs' Interrogatory No. 6, above.

Response:

5. Produce copies of reports or other formal outlines of expert opinion by any expert witness who will testify at the trial of this matter as identified in response to Plaintiffs' Interrogatory No. 6, above.

Response:

6. Produce copies of any and all documents in the possession of the Defendants and/or its representatives, insurers, or counsel in any way related to David Lightfritz or the subject incident of March 30, 2011.

Response:

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7. Produce copies of the declarations pages, the full insurance policies, and any notifications of reservations of right issued to Defendant for each and every policy of insurance identified in response to Plaintiffs' Interrogatory No. 5 in the possession of the Defendant and/or its representatives.

Response:

8. Produce a complete copy of David Lightfritz's personnel file.

Response:

9. Produce copies of all federal and state income tax returns and/or schedules to income tax documents for Marietta Industrial Enterprises, Inc. Since January 1, 2008.

Response:

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10. A copy of all account statements from any financial institution at which Marietta Industrial Enterprises, Inc. maintains or has maintained, any money since January 1, 2008.

Response:

11. A copy of all deeds to real property to which Marietta Industrial Enterprises, Inc. is the owner.

Response:

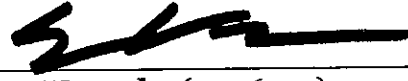
12. A copy of all title documents to vehicles or heavy equipment owned by Marietta Industrial Enterprises, Inc.

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Respectfully submitted,



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VERIFICATION PAGE

I, _____, under the penalty of perjury, certify that the answers provided to the foregoing interrogatories and request for production of documents are true, accurate, and complete to the best of my knowledge.

Printed name

Signature

Title

Date

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