

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>JOSEPH THOMPSON,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>TECHNIK ASSOCIATES, INC.,</b>	:	
	:	
<b>Defendant.</b>	:	<b>NO. 95-3485</b>

**ORDER AND ENTRY  
OF DEFAULT JUDGMENT**

**AND NOW**, on this 21st day of April, 1998, upon consideration of the motion of plaintiff Joseph Thompson (“Thompson”) for default judgment and damages pursuant to Federal Rule of Civil Procedure 55(b)(2) (Document No. 14), and having conducted a hearing on this issue on March 25, 1998,<sup>1</sup> and having found and concluded that:

1. The complaint was properly served on defendant. Default was entered by the clerk against defendant Technik Associates, Inc. on September 19, 1996. Defendant has neither filed an answer nor entered an appearance in this matter. When a defaulting party has failed to appear, it is not entitled to notice of the application for a default judgment under Rule 55(b)(2). Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2687 (citing Port-Wide Container Co. v. Interstate Maintenance Corp., 440 F.2d 1195 (3d Cir. 1971)); see also Zuelke Tool & Eng’g Co. v. Anderson Die Castings, Inc., 925 F.2d 226, 231 (7th Cir. 1991) (defendant made no appearance in court prior to entry of default judgment and therefore was not entitled under Rule 55(b)(2) to notice).

The averments of the complaint have been received in evidence. Pursuant to Federal Rule of Civil Procedure 8(d), I shall consider the factual allegations set

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<sup>1</sup> Thompson, through counsel, requested an assessment of damages hearing in a letter to this Court dated December 11, 1997. Thompson, pursuant to this Court’s request, submitted proposed findings of fact and conclusion of law as well as a memorandum on damages. This Court shall construe these submissions as a motion for default judgment, although not specifically labeled as such by Thompson. Also, the hearing for default judgment on March 25, 1998 included liability and an assessment of damages. See Fed. R. Civ. P. 55(b)(2) (“If, in order to enable the court to enter judgment or carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper . . .”).

forth in the complaint to be true;<sup>2</sup>

2. In his complaint, Thompson alleges three causes of action: negligence (Count I), strict product liability (Count II), and breach of implied and express warranties (Count III). Counsel for Thompson informed the Court at the hearing that Thompson is now pursuing only a strict product liability claim pursuant to Section 402A of the Restatement (Second) of Torts;

3. Pennsylvania has adopted Section 402A of the Restatement (Second) of Torts, imposing strict liability on the manufacturers and sellers of defective products. See Griggs v. BIC Corp., 981 F.2d 1429, 1431 (3d Cir.1992); Webb v. Zern, 220 A.2d 853, 854 (Pa. 1966). To sustain a strict product liability claim, a plaintiff must prove that the product was defective, that the defect existed at the time the product left the defendant's control and that the defect in the product proximately caused plaintiff's injuries. Griggs, 981 F.2d at 1432 (citing Berkebile v. Brantly Helicopter Corp., 337 A.2d 893, 898 (Pa. 1975)); Walton v. Avco Corp., 610 A.2d 454, 458-59 (Pa. 1992); Roselli v. General Electric Corp., 599 A.2d 685, 688 (Pa. Super. 1991). Under Section 402A, even if properly designed, a product may be found to be in an unreasonably dangerous condition if the manufacturer fails to warn the user or consumer of latent dangers in the product's use or operation. See Sherk v. Daisy-Heddon, 450 A.2d 615 (Pa. 1982);

4. The Court accepts the following relevant facts taken from the complaint as true: Thompson was employed by Cramco, Inc. at its place of business in the County of Philadelphia, Pennsylvania. On or about March 15, 1994, Thompson was operating a circular saw machine manufactured by defendant, a foreign corporation with its principle place of business in Taipei, Taiwan. When Thompson opened the back of the machine to take out the sawed off pieces of wood, the machine suddenly and without warning severely cut Thompson's right arm. Specifically, Thompson suffered a severe crush injury to the right elbow and forearm with extensive soft tissue injury, necessitating three surgical procedures including irrigation, debridement, and skin graft. Thompson has permanent scars, weakness, loss of motion, and pain in his right elbow. Thompson has been unable to perform daily chores, duties and occupations as a result of his injury. He also suffers from a loss of earnings, a loss of earning capacity, severe pain, mental anguish, and humiliation.

Defendant is regularly engaged in the business of manufacturing and

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<sup>2</sup> Federal Rule of Civil Procedure 8(d) states, in pertinent part:

Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading.

placing into the channels of commerce the circular saw machine used by Thompson. The circular saw machine was unreasonably dangerous and in a defective condition and caused the injuries sustained by Thompson;

5. In addition to the relevant averments of the complaint, the evidence at the hearing, including the testimony of Thompson, proved the following facts:

off On March 15, 1994, wood had lodged in the blade of the circular saw machine operated by Thompson, who is right arm dominant. Thompson turned the machine, as he had been previously instructed to do, and reached his right arm into a small door-like opening of the machine to remove the piece of wood. When he did so, the sleeve of his sweatshirt was pulled into the machine. The blade of the machine was still rotating, despite being turned off. When Thompson pulled his arm out of the machine, he was in a great deal of pain and was screaming. He was taken to a trauma center at Thomas Jefferson University Hospital.

that There was no warning of any kind on the machine. Thompson testified he did not intend to make any contact with the blade when he reached his arm into the machine.

Thompson, after having three surgical procedures within a two-month period, underwent approximately six months of physical therapy at the Philadelphia Hand Center (“PHC”). The Court observed that Thompson’s handshake of his right arm was weaker than his handshake of his left arm.

Thompson is no longer able to participate in recreational activities, such as basketball and softball, cannot lift heavy objects, cannot swing a hammer and thus can no longer perform home remodeling, which he did prior to his employment at Cramco, Inc. Thompson takes Tylenol for pains in his elbow approximately two times per week.

He did not have any problems with his elbow prior to his injury on March 15, 1994;

6. In light of the facts established in paragraphs 4 and 5 above, I find that Thompson has conclusively proved his strict product liability claim for design defect or for failure to warn;<sup>3</sup>

earning 7. Thompson claims damages for medical expenses, wage loss, loss of capacity, and pain and suffering. At the end of the March 25, 1998 hearing, the Court did not close the evidentiary record so that Thompson could submit medical bills and evidence of wage losses no later than April

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<sup>3</sup> At the hearing, counsel for Thompson also articulated a malfunction theory as a bases for proving the strict product liability claim. The malfunction theory of product liability permits a plaintiff to prove a defect in a product in the absence of direct evidence. Instead, a plaintiff may rely on nothing more than circumstantial evidence of product malfunction, so long as the plaintiff eliminates, by a preponderance of the evidence, any abnormal use or reasonable, secondary causes for the malfunction. Rogers v. Johnson & Johnson Prods., Inc., 565 A.2d 751, 754 (Pa. 1989).

8, 1998. To date, Thompson has provided this Court with a bill from Northeastern Hospital in the amount of \$723.50 and a bill from Pennsylvania Hospital in the amount of \$811.90. (Def. Mem. on Damages Exhs. A and B).

Thompson has also submitted a printout of all medical payments made by Thompson's worker's compensation carrier in the amount of \$45,250.65. (Letter of April 14, 1998). Additionally, Thompson submitted a copy of his medical records from the PHC. (Letter of April 15, 1998). The Court receives these two submissions into evidence.

I have reviewed the PHC records and find that Thompson continued to receive medical care related to his injury periodically through 1995 until February 1996, that Thompson returned to work part time in a light duty capacity in September 1994, that he experience increased pain and swelling at work and had to stop working in April 1995, and that it appears that he has a permanent partial limitation of his right arm that cannot be surgically fixed;

8. I find that the medical payments made by the carrier are a reasonably reliable indicator of the medical expenses incurred by Thompson for the injury he suffered as found in paragraphs 4 and 5 above. Accordingly, I will award Thompson damages for medical expenses in the amount of \$45,250.00;

9. Additionally, Thompson testified that he was paid approximately \$300.00 gross income per week at Cramco, Inc. He also testified that, prior to his job at Cramco, Inc., he performed home remodeling, which he is no longer able to do. Other than this testimony, Thompson has not submitted any proof of wage loss damages.

I find that Thompson has not proved to the satisfaction of this Court that he has a significant loss in earning capacity. Based on a review of the medical records, including a physical capacity evaluation taken on March 19, 1995, I infer that Thompson's overall physical impairment is modest, that he is able to use his right arm and that he is able to work in a job within his skills and ability. Therefore, I will not award Thompson any future wage losses or damages for loss of earning capacity.

Considering the entire evidentiary record, however, I will award Thompson past wages losses. The proofs submitted by Thompson regarding his past lost earnings are indeed sketchy and incomplete. I will award damages for past wage loss in the amount of \$30,000.00;<sup>4</sup>

10. Because Thompson endured three surgical procedures, physical therapy, permanent scars, weakness and loss of motion, an award for pain and suffering is

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<sup>4</sup> This figure is based on the printout of Thompson's worker's compensation carrier which shows that indemnity payments were made by the carrier to Thompson in the amount of \$30,638.77.

clearly appropriate. With respect to any pain he currently suffers, Thompson testified that he takes over-the-counter pain medication on an infrequent basis. Overall, I find that though Thompson suffers some restrictive use of his right arm and has permanent scars, the pain he currently suffers from this injury is essentially diminished. According to these considerations, I will award Thompson for his pain and suffering in the amount of \$250,000.00;

### **DAMAGE VERDICT**

I find that plaintiff Joseph Thompson has suffered damages due to the incident of March 15, 1994 in the total amount of \$325,250.00.

### **DEFAULT JUDGMENT**

It is hereby **ORDERED** that a **JUDGMENT OF DEFAULT** is **ENTERED** in favor of plaintiff Joseph Thompson and against defendant Technik Associates, Inc. in the sum of \$325,250.00.

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**LOWELL A. REED, JR., J.**