RANDLES V. ALTEC INDUSTRIES, INC.

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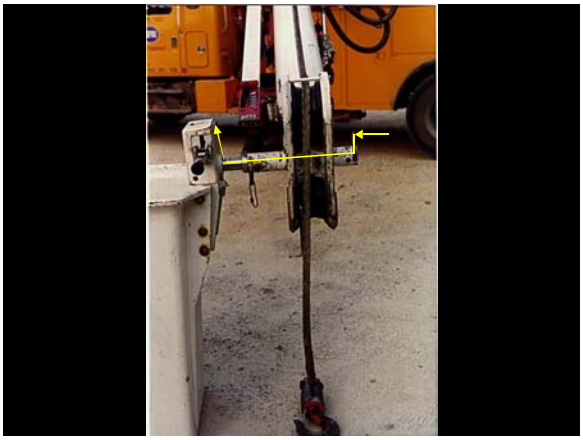
FACTS

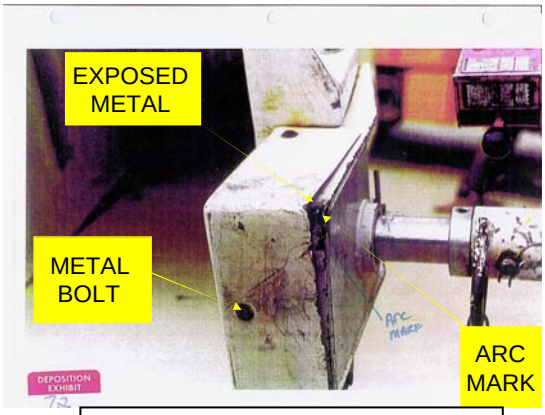
On April 3, 1998, Mark Randles lost his left leg and arm due to electrical injuries while working out of the insulated bucket of an Altec 1090 Digger Derrick with an insulated third stage boom.

Altec 1090 Digger Derrick

Mr. Randles was a journeyman electrical worker employed with Empire District since 1983. He and two co-employees were connecting a new single-phase line to an existing three-phase line. Part of that job required placing a new ground wire on the pole where they were connecting the single-phase line to the three-phase line. To install the new ground wire, the Digger Derrick (line truck) was used to place Mr. Randles in the air to connect the ground wire to the high static line located at the top end of the pole. Mr. Randles operated the boom from the bucket with the upper controls. Mr. Randles placed the bucket in between the middle phase and the field phase to staple the ground wire to the pole. To complete the task of connecting the new ground wire to the high static, Mr. Randles, using the upper controls at the bucket, started to raise the bucket. As he did so, the D-ring on an exposed metal tube for the mounting of a second bucket at the end of the boom on the other side of the boom tip (fiberglass head at the end of the boom) accidentally came into contact with the 7200-volt middle phase. The steel tube ran through the boom tip and was connected to exposed metal in the platform mounting brake where operators rest their arm while working the controls. Mr. Randles' left arm came into contact with the exposed metal. The electricity conducted through his left arm to his left leg that was in contact with the coil of new ground wire in the fiberglass bucket. The coil of ground wire in the bucket was still connected to the new ground wire on the pole. The electricity then arced from the new ground wire to the old ground wire making a path to ground. The electrical burns resulted in amputation of the left arm at the shoulder and left leg above the knee.



Photograph showing path of electricity through the boom tip to Mr. Randles' left arm.

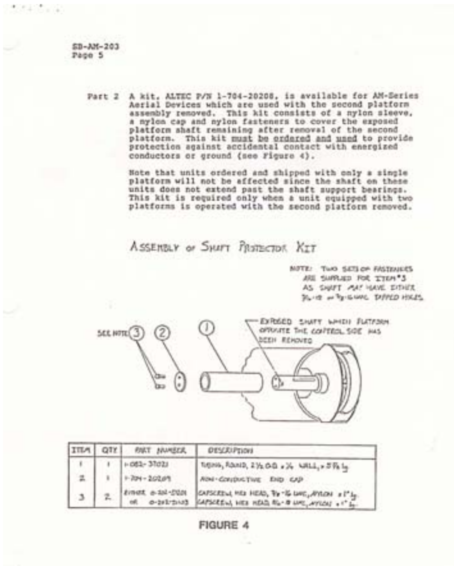


Photograph of contact point with left arm.

THE DEFECT

Mr. Randles' employer, Empire District, purchased the Altec Digger Derrick in 1992. The Digger Derrick was ordered with a third stage insulated boom and fiberglass bucket. The design allowed the bucket to be attached to the steel tube on either side of the boom tip. Altec advertised that, "Altec derricks are recognized for their remarkable suitability for utility line construction and maintenance work - digging holes, handling heavy materials, even putting a man in the air to perform line work." And, is "ideal for working energized lines." Because the manufacturer could reasonably anticipate that the Digger Derrick would be used around live electrical workers, Plaintiff's theory was that exposed steel should either be eliminated or guarded with insulating covers. Specifically, Plaintiff contended that the steel tube should have been covered with a fiberglass re-inforced (FRP) plastic cover and that the FRP cover over the Platform Mounting Brake should cover all of the exposed metal. Through pre-suit investigation, we had determined that Altec had in 1986 designed a similar cover for an aerial device "to reduce the consequences of

accidental" contact with live lines, following the death of a lineman caused by electrical contact with the exposed steel shaft on a similar model.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Part 2 A kit, ALTEC P/N 1-704-20208, is available for AM-Series Aerial Devices which are used with the second platform assembly removed. This kit consists of a nylon sleeve, a nylon cap and nylon fasteners to cover the exposed platform shaft remaining after removal of the second platform. This kit must be ordered and used to provide protection against accidental contact with energized conductors or ground (see Figure 4).

Note that units ordered and shipped with only a single platform will not be effected since the shaft on these units does not extend past the shaft support bearings. This kit is required only when a unit equipped with two platforms is operated with the second platform removed.

ASSEMBLY OF SHAFT PROTECTOR KIT

NOTE: TWO SETS OF FASTENERS ARE SUPPLIED FOR ITEM #3 AS SHAFT MAY HAVE EITHER [illegible] TAPPED HOLES.

SEE NOTE ③ ② ①

EXPOSED SHAFT WHEN PLATFORM OPPOSITE THE CONTROL SIDE HAS BEEN REMOVED

ITEM	QTY	PART NUMBER	DESCRIPTION
1	1	1-082-37021	TUBING, ROUND, [illegible] O.D. x [illegible] WALL, x [illegible] lg
2	1	1-704-20209	NON-CONDUCTIVE END CAP
3	2	EITHER [illegible] OR [illegible]	CAPSCREW, HEX HEAD, [illegible] UNC, NYLON x 1" lg. CAPSCREW, HEX HEAD, [illegible] UNC, NYLON x 1" lg.

FIGURE 4

1986 Shaft Cover Modification Kit

VENUE

The initial issue was the choice of venue. The injury occurred in Polk County. Altec was an Alabama corporation with a plant in Buchanan County, Saint Joseph, Missouri. Pre-suit investigation also revealed that the designer of the Digger Derrick resided in Saint Joseph, Missouri. To avoid the "Daubert" challenges and other unpleasant procedural paperwork associated with Federal Court, the decision was made to join the individual design engineer and proceed with suit in Buchanan County. Although Buchanan County had an Altec plant that built Digger Derricks, our research revealed that it was a better county for trying a personal injury suit than Polk County.

DISCOVERY

As is normally the case, the Defendant attempted to limit the scope of discovery. In this case, Altec sought to limit discovery to the model 1090 Digger Derrick. We sought discovery on all Digger Derricks and aerial devices. The defendant argued that aerial devices were different than Digger Derricks because Digger Derricks were "primarily" used to dig holes and set poles while aerial devices were used exclusively for line work. This issue was crucial since we knew that discovery concerning other incidents and remedial measures taken to avoid the incidents would probably exist in the aerial device documents. Therefore, we proceeded with taking depositions initially on the identity and existence of documents and the differences between aerial devices and Digger Derricks. During these depositions, admissions were obtained that the hazards of accidental contact with live wires were the same for workers in a Digger Derrick as an aerial device when performing line maintenance work. With these admissions, we then filed motions with the court, resulting in orders allowing discovery involving both Digger Derricks and aerial devices. This resulted in the production of many documents that were crucial to the case.

DEFENSES

In addition to denying that the product was defective, the Defendant raised several significant issues. First, the Defendant contended that our injury was the only Digger Derrick incident involving exposed metal at the boom tip. Second, that it was not feasible to cover exposed metal at the boom tip because the available materials for covering the metal did not have sufficient insulating capacity to protect against the high voltages. Therefore, any cover would create a false sense of security. Finally, that the best safety device was for the worker to follow the safety rules promulgated by OSHA and the National Electric Safety Code and adopted by the Plaintiff's employer. The Defendant contended that the rules required Mr. Randles to have worn rubber gloves and covered the electrical lines with line hoses. And, that had Mr. Randles followed these rules, the injury would have been prevented. The Defendant pointed out that there were safety decals on the machine telling the workers that all metal at the boom tip was dangerous and could result in electrical injury if the proper safety rules were not followed.

In response to the "one incident" defense, we developed the similarity of the circumstances of other incidents occurring with aerial devices before Mr. Randles was injured. We also emphasized the advertising and promotion of the Digger Derricks as a machine where the buyer could get two machines for one, a Digger Derrick and aerial device. We also committed the Altec witnesses to testifying under oath that our incident was the only digger derrick incident. Before the depositions and answers to written discovery were due, the Defendant asked the Court to require us to disclose our knowledge of other incidents. We argued that we should not be required to disclose this information until they had answered our written and deposition discovery on this issue in order to assure complete and full disclosure by the Defendant. The Court agreed. After Altec had committed on the issue, shortly before trial we disclosed an electrical contact wrongful death lawsuit against Altec on a Digger Derrick alleging similar facts and theories of liability served on Altec before our Digger Derrick was sold. This resulted in serious credibility issues for the Defendant on the existence of other accidents.

In depositions, we discovered that the Defendant had not done any specific testing to back-up their assertions that covers would provide inadequate protection. They were relying on their general knowledge and testing in other areas to support their opinions that the guarding would be inadequate. Our experts responded, based on their research into various materials available and their general knowledge, that it was feasible to provide adequate protection. We

decided that we did not want to have this settled by a swearing match between experts. So we hired a testing laboratory based in California that specializes in testing insulating capabilities of various materials. We videotaped the testing. The testing demonstrated that existing covers and covers designed for the exposed shafts of aerial devices did provide insulating capacity against the foreseeable voltages that the Digger Derrick would be exposed.

This left us with dealing with the question of the conduct of Mr. Randles in not wearing his safety gloves and failing to use line hoses. The rule-of-thumb under the safety rules was that rubber gloves and line hoses were required if you, your machine, or tools you were holding were within reach or within two foot of a 7200-volt line. Mr. Randles testified that he was familiar with the rule and had attended numerous safety meetings with his employer where the rule had been discussed. Mr. Randles explained that at the time of the incident, he did not believe that he was within reach of the lines. And, he explained that he did not consider the machine in the two-foot rule. The depositions of Empire District employees, including co-workers, all demonstrated clearly that Mr. Randles violated the safety rules. At the same time, these same employees testified that they had on occasions in retrospect inadvertently violated the rules, but that this was something that just happens in the field.

To deal with this issue, we made the strategic decision to concede the rule violation. We took the position that they had successfully proved that our Plaintiff was human, and that humans will certainly make mistakes and misjudgments. We argued that warnings do not prevent people from errors in judgment since the evidence clearly demonstrated that Mr. Randles did not intentionally place himself in danger. We countered that if the safety rules were always followed, then there would never be a need for an insulated boom. Our theme was that product safety is for the purpose of protecting workers from catastrophic injuries from foreseeable mistakes. This theme was brought home during the deposition of Altec's Chairman of the Board. In response to a question asking why it is necessary to have an insulated boom in view of the fact that you would never have a problem if the lineman never made a mistake in following the safety rules, he said, "I want to meet that person."

"I want to meet that person."

CONCLUSION OF CASE

The case was settled in mediation before trial. The Plaintiff agreed to maintain the amount of the settlement confidential, but refused Altec's request that the underlying facts and the fact of settlement be kept confidential.