

## FEDERAL

## FEATURED VERDICT

## PRODUCTS LIABILITY

Failure to Warn — Breach of Warranty — Design Defect

## Technician who was burned failed to read warning: defense

**VERDICT** Defense

**CASE** John A. Grieco v. Tecumseh Products Company and Tecumseh Compressor Company, No. 12-cv-00195

**COURT** U.S. District Court, Southern District, Savannah, GA

**JUDGE** B. Avant Edenfield

**DATE** 12/17/2013

**PLAINTIFF**

**ATTORNEY(S)** Walter C. Hartridge, II, Bouhan Falligant LLP, Savannah, GA  
John B. Manly, Bouhan Falligant LLP, Savannah, GA  
E. Pomeroy Williams, Bouhan Falligant LLP, Savannah, GA

**DEFENSE**

**ATTORNEY(S)** J. Carter Thompson (lead), Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Jackson, MS  
Damany F. Ransom, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Atlanta, GA

**FACTS & ALLEGATIONS** On July 22, 2010, plaintiff John Grieco, a commercial cooling/refrigeration service technician in his mid-40s, was called to Charley's Subs, a restaurant inside the Savannah Mall in Savannah, Ga., to repair a Tecumseh compressor unit in the walk-in cooler. Upon his arrival, he turned the breaker to the "off" position, and found burned wires at the connection point to the thermal protector on the compressor. Grieco removed the thermal protector from its mount and found that it was also burned. He began to test the start capacitor on the compressor, finding that the capacitor had also failed. He installed a new terminal protector, start capacitor and start relay. When he turned on the power to the circuit breaker, the compressor caught fire and exploded. Grieco sustained extensive burns.

Grieco sued Tecumseh Products Co. and Tecumseh Compressor Co., alleging that they were negligent in the design, manufacture and testing of the compressor, as well

as negligent in their failure to warn, failure to instruct, and failure to advise the consuming public of attendant hazards. He also alleged breach of warranty and breach of express warranties.

The court granted the defense summary judgment on eight out of 10 claims of negligence, and also ruled that the testimony of the plaintiff's expert could be excluded. The remaining claims were failure to warn and breach of warranty. Grieco dropped the breach of warranty claim, leaving the failure to warn claim as the only issue at trial.

Grieco alleged that Tecumseh failed to adequately convey visible warnings to users of the compressor, thus allowing Grieco to be unaware of the dangers possible while working on the product. According to Grieco, the warnings present on the compressor were defective, as they were not visible or readable from Grieco's vantage point while he was working. Therefore, he contended, the defendants were liable for their failure to adequately communicate their warning to him.

Defense counsel disputed the allegations of negligence, contending that Grieco failed to read the printed warning on the compressor, which under Georgia law made the proximate cause of his injuries his failure to read a warning, instead of the warning itself. They also contended that the warning in question had been communicated to him, Grieco having seen the warning on the same compressor a few months before the accident. Defense counsel reported that Grieco had installed the same compressor in the shop six months prior to the incident.

According to the defense's mechanical engineering expert, the warning in question was put on the correct side of the compressor, where Grieco could see and read it while working on the product. The expert further testified that the warning was also provided in the product's user's manual, in a package insert, and online, which was the extent of the companies' responsibilities.

**INJURIES/DAMAGES** *arm; burns, second degree; burns, third degree; head; shoulder*

Following the incident, Grieco was transported to the Joseph Still Burn Center in Augusta, where he was admitted for five days. He sustained second- and third-degree burns to his shoulders, arms and head. Following his hospitalization, Grieco stayed with his mother-in-law, where he recuperated.

Grieco's counsel alleged that Grieco was in severe pain during his treatment and recuperation period.

Grieco's counsel asked the jury for a recovery of \$80,000 in medical costs, as well as pain and suffering damages of approximately \$675,000. There was no lost wages claimed, due to his being an individual businessman at the time of the litigation.

**RESULT** The jury rendered a unanimous verdict, finding that there was no proximate cause on the part of the defendants for Grieco's injuries.