

**PRODUCTS LIABILITY**

Design Defect — Manufacturing Defect — Failure to Inspect

**Defense claimed chain binder broke due to improper use**

<b>VERDICT</b>	<b>Defense</b>
<b>CASE</b>	Eddie Horner v. Paneltech International, LLC, Central Oregon & Pacific Railroad, Greenbrier Companies, Inc. and Gunderson Rail Services, LLC, also known as Greenbrier Rail Services, No. 2:09-cv-01564-KJM-CMK
<b>COURT</b>	United States District Court, Eastern District, Sacramento
<b>JUDGE</b>	Kimberly J. Mueller
<b>DATE</b>	9/28/2012
<b>PLAINTIFF</b>	
<b>ATTORNEY(S)</b>	Todd E. Slaughter, Reiner, Simpson, Slaughter & Wood, L.L.P., Redding, CA
<b>DEFENSE</b>	
<b>ATTORNEY(S)</b>	Daniel P. Costa, The Costa Law Firm, Gold River, CA (Paneltech International, LLC) B. Clyde Hutchinson, Lombardi, Loper & Conant, Oakland, CA (Central Oregon & Pacific Railroad) David D. MacMillan, The Costa Law Firm, Gold River, CA (Paneltech International, LLC) Jason Bradley Shane, Lombardi, Loper & Conant, Oakland, CA (Central Oregon & Pacific Railroad) None reported (Gunderson Rail Services, LLC, Greenbrier Companies, Inc.)

**FACTS & ALLEGATIONS** On Feb. 12, 2007, plaintiff Eddie Horner, 55, the lead yard man at the log yard at Roseburg Forest Products' sawmill in Weed, was securing logs to a railcar. In order to tighten the cable that secured the logs, Horner pulled down on a chain binder that was welded to a steel vertical post from overhead. However, as he applied force on the binder to tighten the cable, the binder broke away from the vertical post, causing Horner to fall to the ground.

Horner initially sued the commercial lessor of the subject railcar that provided the tie-down system, Paneltech International, LLC; and the owners of the railcar, Central Oregon & Pacific Railroad (CORP), Greenbrier Companies Inc. and Gunderson Rail Services, LLC, also known as Greenbrier Rail Services.

Horner's counsel ultimately dismissed Greenbrier and Gunderson for a waiver of costs and settled with CORP for \$100,000 prior to trial. Thus, the matter continued against Paneltech only on the claims that the tie-down system was defectively designed and manufactured, and that Paneltech was negligent in its failure to inspect the system.

Horner claimed that the binder appeared to be new, as it was bright red, but that as he applied the appropriate amount of force, it broke. Thus, he contended that Paneltech provided a defective tie-down system. Horner's counsel argued that Paneltech inadequately designed and welded the chain binder assembly to the vertical post, called a log bunk. Counsel also argued that Paneltech inadequately inspected its railcars and log bunks, so as to allow the defective tie-down to pass into the rail system and be delivered to the subject yard in Weed. In addition, Horner's counsel argued that the binder should not have been welded to the log bunk at all, and that the weld itself was defective and insufficient.

Paneltech contended that welding binders to log bunks had been done for many years and was the standard in the railroad industry. It also denied that its employees performed the weld that broke on the subject date and claimed that it adequately inspects its railcars. Defense counsel argued that the weld work could have been done by some other party after the railcar left Paneltech's possession and control from the Paneltech lot, or that it could have been damaged after leaving Paneltech and before Horner's fall. Counsel also asserted that CORP, which leased the railcar from Paneltech, was responsible under the terms of its lease to repair the log bunks and tie down accessories, yet it failed to determine that the subject chain binders should have been replaced.

Defense counsel argued that the subject incident was caused by Horner's own operator error, as Horner used a "cheater bar" to extend the handle of the binder against the manufacturer's recommendations and that if the bar had not been used, the weld would have been sufficient. In addition, counsel contended that Horner's employer was negligent in not properly training and supervising Horner in the proper use of the chain binder.

**INJURIES/DAMAGES** *aggravation of pre-existing condition; chest; chiropractic; discectomy; fusion, cervical; lower back; neck; radiculopathy; tinnitus; vertigo*

Horner claimed that he fell on his buttocks from a standing position and, thereafter, experienced neck pain, cervical radiculopathy, tinnitus, chest pain, lower back pain and vertigo. He alleged that he treated his resulting vertigo with chiropractic, conservative treatment and is now being addressed as vestibular vertigo arising from a migraine condition.

Horner previously suffered from cervical disc disease, which he claimed was aggravated by the fall. He subsequently underwent a cervical discectomy and fusion at the C5-6 level in July 2008, but it failed. As a result, the surgery was repeated with the C4-5 level also being fused in January 2010.

Prior to the surgeries, Horner claimed he was able to work full time or return to full duty. He claimed that after the procedures, he had to work on limited duty, but that by the end of July 2009, he could not work at the log yard job anymore. Since that time, Horner has not worked at all and claimed he cannot do any other type of work.

Thus, Horner initially estimated his medical and income loss amounting to \$802,000 in economic damages. His medical specials were approximately \$97,000, which was the agreed reduction before trial for Howell considerations, and his past and future wage loss was calculated to be approximately \$705,000.

Defense counsel argued that the purported injuries Horner sustained could not have been caused by a simple fall on his buttocks.

**RESULT** The jury found that although Paneltech leased or rented the log bunk with chain binder, it was not negligent, and that the product did not contain a manufacturing or design defect when it left Paneltech's possession. Thus, the jury returned a defense verdict.

**DEMAND** \$5.5 million  
**OFFER** \$100,001 (offer of judgment)

**TRIAL DETAILS** Trial Length: 10 days  
Trial Deliberations: 2 days  
Jury Vote: unanimous (8-0)

**PLAINTIFF EXPERT(S)**

- Gene Broadman, P.E., forensic engineering, Livermore, CA
- Kenneth Brown, welding, San Luis Obispo, CA
- Scott F. Durbin, D.C., chiropractic, Weed, CA (treating chiropractor)
- Robert R. Herrick, M.D., neurology, Richmond, CA (testified in worker's compensation case)
- Van Buren R. Lemons, M.D., neurosurgery, Sacramento, CA
- Lawrence R. Lustig, M.D., otolaryngology, San Francisco, CA
- Charles R. Mahla, Ph.D., economics, Los Angeles, CA
- James McGowan, M.A., C.R.C., vocational rehabilitation, Santa Rosa, CA
- Ronald P. Sellberg, mechanical, Naperville, IL
- W. Sam Williams, M.D., family medicine, Weed, CA (treating physician)
- Jesse L. Wobrock, Ph.D., injury biomechanics, San Francisco, CA

**DEFENSE EXPERT(S)**

- Thomas L. Read, Ph.D., welding, Santa Rosa, CA (consulting engineer)
- Richard N. Robertson, Ph.D., biomechanics, Eugene, OR
- Howard Slyter, M.D., neurology, Sacramento, CA

**POST-TRIAL** According to defense counsel, plaintiff's counsel intends to bring a motion for judgment notwithstanding the verdict and possibly a motion for a new trial.

**EDITOR'S NOTE** This report is based on information that was provided by counsel for Paneltech International, LLC. Plaintiff's counsel and counsel for Central Oregon & Pacific Railroad did not respond to the reporter's phone calls. The remaining defense counsel were not asked to contribute.

—Priya Idiculla

## CENTRAL DISTRICT

### GOVERNMENT

Excessive Force — Civil Rights — Police as Defendant

## Officers' use of gun and Taser were excessive: bipolar woman

**VERDICT** \$3,218,500

**CASE** Valerie Allen v. City of Los Angeles, Los Angeles Police Department, Officer Nam Phan, Officer Brent Houlihan, and Officer Joseph Bezak, No. 2:10-cv-04695-CAS-RC  
**COURT** United States District Court, Central District, Los Angeles  
**JUDGE** Christina A. Snyder  
**DATE** 9/28/2012

**PLAINTIFF ATTORNEY(S)** Gilbert R. Geilim, Law Offices of Gilbert R. Geilim, Van Nuys, CA  
Martin L. Stanley, Law Office of Martin L. Stanley, Santa Monica, CA

**DEFENSE ATTORNEY(S)** Richard M. Arias, Los Angeles City Attorney's Office, Los Angeles, CA

**FACTS & ALLEGATIONS** On Sept. 3, 2009, plaintiff Valerie Allen, 37, a nursing student with a bipolar disorder, experienced a sudden manic episode. In the evening, Allen, who stood 5-foot, 3-inches tall and weighed 220 pounds, drove from her Buena Park home to Hollywood. She then proceeded to get out of her car and walk around the neighborhood in nothing but a t-shirt until the early morning hours. A passerby saw Allen and flagged down Los Angeles Police Department Officer Brent Houlihan and his rookie partner, Officer Nam Phan. When Allen was approached by the two officers in their cruiser at approximately 7 a.m., she banged on their passenger-side window. A foot chase ensued, in which the officers followed Allen into a backyard, where she sprayed Houlihan with a hose before jumping a fence.

The officers eventually cornered Allen in a narrow walkway. Houlihan claimed he told Phan to "Tase" her. However, Phan claimed he thought Houlihan said to "engage" her and