

CENTERPIECE

Jury award for injury caused by Toro self-propelled lawnmower which suddenly self-engaged.

Slanger v. Toro Manufacturing Co., Mich., Kent County Circuit Court, No. 85-46820-NI, Nov. 14, 1986.

Herman Slanger had travelled a lifetime as a salesman for Firestone tires. When he retired at age 70, Herm and his wife of 49 years, Isabelle, made up for the time they had spent apart. They joined bowling and golf leagues. They travelled together. One of their favorite activities was dancing nearly every Friday night.

On May 8, 1982, Herm laced up his golf shoes to cut the grass in the back yard of their home in Grand Rapids, Michigan. He started up his 1977 Toro 21-inch Grassmaster self-propelled walk-behind mower. At the top of a slope, he disengaged the traction system and began walking the mower downhill. Halfway down, the traction control lever slipped back into the engage position. The mower lurched forward, yanking Herm off his feet and sending him sprawling down the hill. He suffered a hyperflexion injury at C-4, resulting in quadriplegia. The Slangers' dreams of spending their golden years together vanished. Herm would spend the rest of his life in a nursing home; Isabelle would be alone.

A Hair-Trigger Lawnmower

Toro used essentially the same traction control system on its self-propelled mowers from 1965 to 1984. The user could engage or disengage the traction drive with a lever mounted on the mower handle. The lever pulled a cable connected to a gear box near the front wheels. The gear box was a spring-loaded "go system." The user had to pull back the lever with about 6 pounds of pressure to disengage the traction system. But only about a quarter-pound of force was needed to engage it. Compounding the danger was the fact that there was no protective cover over the gear box. Dirt and debris in the spring coil and the L-slot could prevent full disengagement of the traction drive. As a result, a slight jolt or even the vibrations of the motor could cause the mower to propel itself forward.

Deny, Deny, Deny

The Slangers retained ATLA members Keary W. Sawyer and R. Kevin Thieme of Grand Rapids, Michi-

gan. After a mechanical engineering report revealed that the mower could self-engage, counsel asked Toro in interrogatories to disclose prior similar incidents. Since Toro had manufactured approximately 75,000 units annually, a serious design defect should have come to light by now. Also, Toro's defense was that the mower did not self-engage at all, that Herm Slanger simply fell. Thus evidence of prior accidents was crucial both to the existence of a design defect and to causation. Sawyer and Thieme were incredulous, therefore, when Toro responded that there had never been a lawsuit or consumer complaint relating to self-engagement.

Toro fought discovery at every turn. After Toro responded to two sets of interrogatories with denials of any reported problems with the traction system, Sawyer journeyed to the corporation's headquarters in Minneapolis to take depositions. What he discovered was that, although manufacturers are required to maintain information concerning product hazards, Toro has constructed a record-keeping system that effectively shields embarrassing material from unfriendly eyes. The company receives about 5,500 letters from consumers annually. Under the direction of Toro's counsel, information relating to consumer complaints is entered into a computer record. Only selective information is recorded, the record is protected by a computer code, and the letters themselves are destroyed after one year. After three trips to Minneapolis, Sawyer was unable to obtain any information regarding prior accidents. Counsel also found that Toro had destroyed all records of its prototype testing of the self-propelled mower.

ATLA Exchange

Sawyer and Thieme were convinced that Herm Slanger was not the first person harmed by Toro's mower. Their next step was to contact the ATLA Exchange. The Exchange file led them to two prior cases that would demolish Toro's defense. In 1972, 6-year-old Johnny Rogers was playing in the yard of his home in St. Louis, Missouri. His father left his Toro self-propelled mower disengaged to empty the grass bag. The mower slipped into gear and ran over Johnny's foot. The case was tried, appealed, and then settled. One of Toro's witnesses at that trial was an in-house engineer, the same engineer who signed the first set of responses to Slanger's interrogatories denying the existence of any prior injuries.

In 1975, Warren Tripp left his Toro mower disengaged while he spoke to his wife. The mower slipped into gear, crossed the front yard, and severed his Achilles tendon. Toro's answer to Tripp's complaint was signed by the general counsel, the same attorney who signed the response to the second set of interrogatories in Slinger's case in which Toro denied any knowledge of prior similar accidents.

Plaintiff's Case

Plaintiff's highest pretrial settlement demand was \$675,000. Defendant offered nothing. Trial began in mid-October before Circuit Judge Woodrow A. Yared.

Plaintiff's first expert witness was Jerome Catz, a mechanical engineer from Miami, Florida. He gave an effective explanation to the jury that the spring-loaded design of the gear box, allowing the traction system to engage with minimal pressure, combined with the lack of any protection to keep dirt and debris out of the gear box, rendered the mower unreasonably dangerous. This opinion was confirmed by Richard VerHalen, a consulting engineer from Chicago, Illinois.

Toro insisted to the end that its mower was not defective and that it had never heard of any instance of the traction system self-engaging. Plaintiff responded with the damning documents from the *Rogers* and *Tripp* cases. In addition, a woman testified that she had answered a newspaper advertisement in which Sawyer and Thieme asked to contact owners of the same make and model of Toro mower that injured Slinger. The woman had met with Sawyer, but had refused to sell him her mower because she felt it was dangerous: it kept slipping into gear. A Toro repairman testified for plaintiff that at least 25 Toro mowers were brought to his shop each year with the self-engage problem. In fact, just re-

cently a mower had run into the shop wall by itself.

Blame the Victim

It was apparent that Toro had taken its strategy of playing close to the vest one step too far. Local defense counsel, Donald Vasos, appeared genuinely surprised by the documentation from the prior lawsuits and could provide no explanation for the corporation's denials.

Vasos was forced to resort to blaming the victim for his own injuries. In opening statement, he portrayed Herm Slinger as an elderly, clumsy man in ill health with a history of unexplained falls. After Herm's direct testimony, Vasos began a fierce cross-examination that quickly fizzled. Yes, Herm had fallen previously — four times between 1971 and 1982. That was not unusual for a person of any age. Once he slipped on ice. Once he tripped on a dog leash. Shortly before the accident Herm had fallen while he was standing on one foot to take off his shoe after a night of drinking and dancing at the Mistletoe Ball. The jurors might have been tempted to smile until they saw the tears in Isabelle's eyes. It was the last time they would ever dance together.

"Don't Let Them Forget"

Counsel had presented the jury with a compelling case, not only of design defect, but also of willful misconduct on the part of Toro. Michigan, however, is one of the 4 states that do not permit punitive damages. In his closing argument, Sawyer urged the jury to send a message to Toro which would reflect the true value of Herman Slinger's injuries. "Don't let them forget Herm Slinger as easily as they forgot Johnny Rogers and Warren Tripp."

The jury deliberated for only 3 hours. They returned a verdict awarding \$1,118,228 to Herman Slinger and \$250,000 to Isabelle for loss of consortium.

JRW

Want to know more about the ATLA Exchange?
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