STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL D. GREGORY,

Plaintiff-Appellee,

v

CINCINNATI, INC., and ADDY-MORAND MACHINERY CO.,

Defendants-Appellants,

and

CRUM & FORSTER,

Intervening Plaintiff.

UNPUBLISHED
February 23, 1999

No. 198382
Wayne Circuit Court
LC No. 86-627406 CZ

MICHAEL D. GREGORY,

Plaintiff-Appellee,

v

CINCINNATI, INC., and ADDY-MORAND MACHINERY CO.,

Defendants-Appellants,

and

CRUM & FORSTER,

Intervening Plaintiff.

No. 199691
Wayne Circuit Court
LC No. 86-627406 CZ

Before: Cavanagh, P.J., and Doctoroff and Saad, JJ.

CAVANAGH, P.J. (dissenting).

I respectfully dissent. I believe that the trial court correctly denied defendants' motion for directed verdict and judgment notwithstanding the verdict. Although the majority does not reach this issue, I also believe that the trial court did not err in denying defendants' motion for remittitur of prejudgment interest.

In my opinion, plaintiff submitted sufficient evidence concerning the magnitude of the risks and the reasonableness of the proposed alternative designs. See *Reeves v Cincinnati, Inc*, 176 Mich App 181, 187-188; 439 NW2d 326 (1989). With regard to the magnitude of the risk, plaintiff presented numerous documents from governmental and industry organizations which stated that the press brake was a very dangerous machine and that the most common accidents to its operators were hand and finger injuries. Contrary to defendants' argument, a "showing of the magnitude of foreseeable risks," see *id*., does not require statistical evidence when, as here, there is sufficient evidence of the likelihood of this type of accident occurring.

In addition, plaintiff presented evidence of numerous recommendations by the government and the industry prior to 1964 that safety devices be built into the press brake to prevent such accidents. Plaintiff's expert testified that these safety devices were available in 1964 and would have been compatible with defendants' press brake. Thus, the trial court correctly denied defendants' motion for judgment notwithstanding the verdict because factual questions existed upon which reasonable minds could differ. See *Alar v Mercy Memorial Hosp*, 208 Mich App 518, 524; 529 NW2d 318 (1995).

Furthermore, I would uphold the trial court's decision to deny defendants' motion for remittitur as to prejudgment interest during the time of the first appeal of this matter. In defendants' previous appeal, the Supreme Court remanded the case for a new trial. Thus, defendants cannot be considered a prevailing party because they did not prevail *on the entire record* in their prior appeal. See MCR 2.625(B)(2).

I would affirm.

/s/ Mark J. Cavanagh