CLIENT ALERT

BALCH & BINGHAM LLP

WOODWORKING AND POWER TOOL PRODUCT LIABILITY CASE LAW UPDATE

by JAMES DARTLIN (DART) MEADOWS

Balch & Bingham LLP is in the forefront in the defense of woodworking machinery and power tool manufacturers, distributors, and dealers in products liability litigation throughout the United States. Products have included shapers, fixed and sliding table saws, gang rip saws, moulders, panel saws (including stationary and sliding as well as vertical and horizontal panel saws), jig and band saws, double end tennenors, jointers, drilling and boring machines, sanders, miter saws, hand-held circular saws, pneumatic nailers, and a wide variety of computer numerically controlled machines. In addition, the firm has represented tooling manufacturers and other companies that supply component parts, equipment, and accessories to the woodworking industry. Attorneys in this practice group have worked closely with the leading experts in the industry, have had extensive dealings with the applicable ANSI and OSHA standards, and have successfully defended both domestic and foreign companies in cases in over 35 states. In addition to woodworking machinery and power tools, other products liability cases handled by this practice group in recent years include child restraint systems and juvenile products, construction equipment, motor vehicles, sawmill and other industrial equipment, chemical products, firearm design, airline parts and products, motorcycle helmets, and gas tanks.

SELECT JURY VERDICTS

Thull v. Techtronic Industries Co. Ltd., No. 0:11-cv-02368 (D. Minn.)

On October 23, 2014, a Minnesota federal jury found the design of the RIDGID 10-inch table saw was not the cause of a woodworker's injury. Thull had sought $6.4 million in damages for injuries to his forearm he sustained while using the saw. The defendants argued Thull assumed the risk of injury when he chose to use the saw without its guard. Thull responded that he removed the guard because its defective design made cutting more difficult and dangerous and because it obstructed his view when making certain types of cuts. The defendants countered Thull removed the guard simply to work faster.

Anderson v. Techtronic Industries North America Inc. et al., No. 6:13-cv-01571 (M.D. Fla.)

On May 12, 2015, a Florida federal jury found a Ryobi BTS10 table saw was defectively designed and awarded Anderson $108,000 in damages for finger injuries he sustained while using the saw. Because the jury also found Anderson's own negligence caused his accident, however, the damages award was reduced by 75%, to $27,000. Anderson had claimed the saw was defectively designed because it did

not include available flesh detection technology and because the blade guard on the saw was difficult to use, it had to be removed to make certain cuts, once it is removed the guard was difficult to reattach, and it was therefore common practice for users of the saw either to assemble the saw without the guard or to remove the guard permanently. The defendants had argued Anderson was negligent in operating the saw without its blade guard and because he had not read its user manual or warnings labels, he was using the saw without a safety blade to cut thin material not suitable for the saw, and the blade was set at an unsafe height.

Austin v. Rexon Industrial Corp. et al., No. 1:14-cv-00066 (W.D.N.C.)

On September 16, 2015, a North Carolina federal jury found the defendants not liable for Austin's injury to his fingers that occurred when the Task Force BTW2500W table saw he was using started to tip over and he reflexively grabbed the blade. Austin had claimed the saw was defectively designed and unreasonably dangerous because it did not include flesh detection technology that would have stopped the saw blade in milliseconds. The defendants contended Austin was liable under an operator error theory, in that he failed to read the manual, let go of the wood he was cutting, pulled the piece of wood through the saw from behind, and generally operated the saw contrary to warnings in the manual.

CHALLENGES TO EXPERT OPINIONS OF DARRY ROBERT HOLT

The plaintiffs in many recent cases have retained mechanical engineer Darry Robert Holt to provide expert testimony regarding alleged defects in the design of the blade guards on, and the feasibility of incorporating flesh detection technology into, the particular power saws at issue. Courts have for the most part allowed Holt's proposed testimony in the face of challenges from defendants.

Wood v. Robert Bosch Tool Corp., No. 4:13CV01888 TCM, 2015 WL 5638040 (E.D. Mo. Sept. 24, 2015)

Bosch challenged the relevance of Holt's opinion that the blade guard on a Skilsaw model 3305 table saw was defective because many users remove it. Because Wood had the guard in place at the time of his accident, the court granted Bosch's Daubert motion to the extent it challenged that opinion.

Bosch also challenged Holt's qualifications to opine about the technical and economic feasibility of incorporating flesh detection technology into the saw. The court concluded Holt was qualified to so testify due to his education and experience in mechanical engineering, his review and testing of SawStop saws that include flesh detection technology, and his experience with and consideration of table saws without flesh detection technology.

Because Wood's other experts opined the accident would have been avoided if the saw had a modular guard or an independent riving knife, and that the severity of the injury would have been significantly lessened with the presence of flesh detection technology, the court concluded Wood provided sufficient evidence of causation so as to avoid summary judgment in favor of Bosch.

Bruskotter v. Robert Bosch Tool Corp., No. 6:13-CV-1841-ORL-41, 2015 WL 5173050 (M.D. Fla. Sept. 3, 2015)

Bruskotter alleged he was injured when his thumb came in contact with the rotating blade of Bosch's Skilsaw model 3305 benchtop table saw and that the saw was defective because it did not incorporate flesh detection technology. In moving to exclude Holt's expert testimony, Bosch did not challenge Holt's opinion that flesh detection technology could be incorporated into a benchtop table saw, but instead argued Holt's opinion as to timing – that such technology could have been implemented prior to the manufacture of the saw at issue in 2009 – was unreliable and should be excluded. The court agreed, holding the fact that Dr. Stephen Gass was able to create a "proof of concept prototype" on a different type of saw in thirty days was "wholly irrelevant" to how long it takes to turn a prototype into a consumer-ready production model. Moreover, Holt admitted he had no experience or personal knowledge regarding designing, building, or manufacturing a table saw for commercial production or implementing new technology for commercial production. Holt had not demonstrated any reliable basis on which to opine regarding how long it would take for a saw manufacturer to incorporate flesh detection technology into a consumer-ready benchtop table saw. To the contrary, Holt testified he had no such knowledge. Thus, Holt's opinion regarding when Bosch could or should have made a benchtop saw with flesh detection technology available to consumers was excluded.

Edwards v. Techtronic Industries North America, Inc., No. 3:13-CV-01362-SI, 2015 WL 3616558 (D. Or. June 9, 2015)

The court held Holt was qualified to opine that incorporating flesh detection technology into the Ryobi model RTS20 portable benchtop table saw was technologically feasible. The court held Holt was not qualified, however, to offer an opinion regarding the economic feasibility of incorporating flesh detection technology because he did not have specific experience or training in economics, accounting, business, or finance and had not performed an economic or accounting analysis.

Dixon v. Home Depot, U.S., No. CIV.A. 13-2776, 2015 WL 2254861 (W.D. La. May 13, 2015)

The court excluded Holt's opinions regarding the feasibility of incorporating flesh detection technology into the Ryobi BTS12S table saw, because they were unsupported by any personal knowledge or any relevant testing and analysis. Holt offered no opinions based on his own testing that flesh detection technology could have been incorporated, and his opinions regarding the economic feasibility of integrating the technology were not his own.

OTHER EXPERT TESTIMONY ISSUES

Hilaire v. DeWalt Industrial Tool Co., 54 F. Supp. 3d 223 (E.D.N.Y. 2014)

The court held Hilaire's safety engineer expert was qualified to testify as to the design and safety of the DeWalt DW745 Heavy-Duty 10-inch table saw and whether the saw performed safely in light of its foreseeable uses and misuses, and was not unqualified because he was not an electrical or mechanical engineer, had no education or experience in designing table saws, and had limited experience with type of saw at issue. Although the court acknowledged he had "very little experience" with the table saw at issue and his knowledge of this particular table saw was "limited," the court found he was qualified, "albeit barely."

DeWalt also sought to exclude the expert's opinions as unreliable and speculative. The expert intended to opine the saw had a design defect due to lack of proper interlock safety guards and that "a proper permanent guard or other design" would have prevented Hilaire's injury. The court excluded the expert's testimony regarding the interlock was unreliable, since the expert admitted the interlock system had only been designed "in his mind" and failed to present proper testing and methodology, failed to offer design drawings, could not point to any table saws on the market that have the interlock design, and could not show the interlock device had ever been tested or evaluated on the type of saw at issue. The court held the expert's conclusions concerning other alternative designs were similarly without analysis or support. The expert asserted that "if a guard is placed at the point of operation on the saw, the dangers of coming in contact with its moving parts will be eliminated," an assertion the court concluded was "self-evident based solely on common sense." The expert failed to describe what a "proper permanent guard" would be, provided no analysis of the feasibility or cost of installing any of his proposed alternatives, and did not address the effect such designs would have on the utility of the saw. Finally, the expert's proposed testimony that the saw should have been designed with SawStop technology was not reliable because the expert had not tested such technology to determine the feasibility of its use with saw at issue.

Dixon v. Home Depot, U.S., No. CIV.A. 13-2776, 2015 WL 2254861 (W.D. La. May 13, 2015)

Dixon sought to introduce portions of Dr. Stephen Gass's prior trial testimony from Stollings v. Ryobi Technologies and Osorio v. One World Technologies under the exception to the hearsay rule of Federal Rule of Evidence 804(b)(1), because Gass was unavailable as a witness. The court excluded Gass's prior testimony, finding that, regardless of whether the testimony would be generally admissible under Rule 804(b), it still contained expert opinions and must survive Daubert scrutiny. The court could not determine whether his prior "testimony's underlying reasoning or methodology is scientifically valid" and could be properly "applied to the facts at issue" in the present case.

The court granted the defendants summary judgment on Dixon's flesh detection alternative design claim because, without testimony from Gass and Holt, Dixon failed to present evidence regarding the economic feasibility of integrating SawStop technology into the subject saw at the time of its manufacture in 2009.

Moreover, even if Gass's testimony from Stollings and Osorio were admissible as evidence, it provided insufficient analysis regarding the cost to redesign and manufacture the Ryobi BTS12S table saw to incorporate SawStop and did not address the loss of utility that integrating the technology would cause, such as the increased weight and size, the lack of portability, and the attendant decrease in marketability.

The court denied the defendants summary judgment on Dixon's claim that a modular blade guard with an independent riving knife offered a feasible alternative design, based in part on expert testimony that the saw's design proximately caused Dixon's injuries and the defendants' failure to produce evidence that the risk of harm presented by failing to integrate the alternative design outweighed the minimal burden of doing so.

Wood v. Robert Bosch Tool Corp., No. 4:13CV01888 TCM, 2015 WL 5638035 (E.D. Mo. Sept. 24, 2015)

Bosch sought to exclude the expert opinions of Kelly Mehler because, while he was an experienced woodworker, he would not testify about woodworking techniques, but as to the allegedly defective design of the saw, and he did not have experience with the type and model of saw at issue. The court allowed Mehler's testimony, finding although Mehler did not have formal education as an engineer designing or manufacturing table saws, or actual experience with a Skil model 3305 saw, he had sufficient skill, experience, and training from thirty years' experience using and teaching others about the use of table saws to qualify as an expert providing opinions regarding the safety of the Skil model 3305 saw, the efficacy of its guarding system, and the benefits of including a rising and falling riving knife on the saw.

ADMISSIBILITY INTO EVIDENCE OF DOCUMENTS FROM THE CONSUMER PRODUCT SAFETY COMMISSION

Hilaire v. DeWalt Industrial Tool Co., 54 F. Supp. 3d 223 (E.D.N.Y. 2014)

The court excluded as "without scientific rigor" Hilaire's expert's opinion that all table saws are defective because, based on the Consumer Product Safety Commission's ("CPSC") National Electronic Injury Surveillance System ("NEISS") statistics, so many people are injured every year. The NEISS data "is not limited to specific manufacturers or models of saws, and there is no information to verify that the accidents reported were the result of the absence of a guarding mechanism – which is the heart of [the expert's] theory – or were caused by some other defect. Even if there was no question as to the reliability of the data, which is based on patient self-reporting, and the methods used to extrapolate from the reported data were appropriate, there is no evidence that the conclusions drawn from this

data have been verified by or relied upon by other experts in the field of table saw design, and the CPSC explicitly advises against reliance on this data to determine the number of accidents caused by a specific product."

Edwards v. Techtronic Industries North America, Inc., No. 3:13-CV-01362-SI, 2015 WL 3616558 (D. Or. June 9, 2015)

Edwards alleged the Ryobi model RTS20 portable benchtop table saw was defectively designed because it did not incorporate flesh detection technology, and he intended to introduce evidence of reports and data compiled from the NEISS database. The defendants sought to exclude such evidence as hearsay, irrelevant, and prejudicial. The court held NEISS and CPSC data fall under the public records exception to the rule against hearsay (Fed. R. Evid. 803(8)), and the relevance and weight to be afforded such evidence may be addressed during cross-examination. The court agreed the jury should be given the following limiting instruction:

> The plaintiff has offered evidence of other injuries sustained by people using table saws. The CPSC conducts a random sampling of data and extrapolates that sample to make a national estimate of the number of injuries. You are cautioned that this evidence is offered only as evidence of the defendants' notice or awareness of a potential defect in the table saw that is the subject of this litigation. Such evidence of other injuries should not be considered by you as evidence of the existence of a dangerous condition in the table saw that is the subject in this trial.

Dixon v. Home Depot U.S.A., No. CIV.A. 13-2776, 2015 WL 3756199 (W.D. La. June 16, 2015)

The court denied the defendants' motion in limine to exclude a 1976 "Product Profile" report by the CPSC that addressed recent numbers of injuries related to table saws, portable power saws, and chain saws and solicited commentary and data to assist it in determining appropriate remedial actions. The defendants had sought to exclude the report on the ground it was hearsay and because Dixon could not show the incidents reported in it were substantially similar to his accident. The court held the CPSC report was relevant to the issue of the defendants' knowledge that table saws were potentially unreasonably dangerous, but it required a limiting instruction for the jury concerning irrelevant injury data contained in the report. The court further held the report was excepted from the hearsay rule by Federal Rule of Evidence 803(8) as the CPSC's records or statements of "factual findings from a legally authorized investigation."

The court also denied the defendants' motion to exclude as irrelevant a 1990 letter from the CPSC to Underwriters Laboratories discussing changes to be made the CPSC's bench and table saw standards due to the significant number of injuries associated with those saws. The defendants had argued the letter was not addressed to them and there was no evidence the defendants ever examined it. The court held the letter was admissible on the issue whether the defendants knew or should have known of the number of injuries related to table saws and users' general problems with the saws' 3-in-1 guard.

OTHER EVIDENTIARY ISSUES

Edwards v. Techtronic Industries North America, Inc., No. 3:13-CV-01362-SI, 2015 WL 3616558 (D. Or. June 9, 2015)

In a case involving a Ryobi RTS20 portable bench-top table saw, the defendants moved in limine to exclude several categories of evidence. First, the defendants sought to exclude "finger save" reports from SawStop customers who avoided serious injury because of the proper performance of SawStop's flesh detection technology. The court allowed the evidence as a basis for Edwards' expert's opinions regarding the effectiveness of SawStop technology. Second, the court excluded as irrelevant, confusing, and misleading to the jury evidence that Underwriters Laboratories was considering revising UL 987 to require all table saws to incorporate flesh detection technology. Third, the court denied the defendants' motion to exclude evidence of design changes by third-party Bosch and of design changes under consideration by the defendants before Edwards' injury, because Federal Rule of Evidence 407 does not apply to third-parties and only excludes actions taken subsequent to the accident or injury at issue. And even subsequent remedial measures undertaken by a defendant after the accident or injury are admissible to prove the "feasibility of precautionary measures," even if not admissible to prove negligence, culpable conduct, or a defect in design.

In ruling on a number of Edwards' motions in limine, the court allowed the defendants to argue and present evidence that incorporating flesh detection technology in table saws would render such saws prohibitively expensive.

SUBSTANTIAL MODIFICATION DEFENSE

Guard Insurance Group, Inc. v. Techtronic Industries Co., Ltd., No. 11-CV-6254L, 2015 WL 293622 (W.D.N.Y. Jan. 23, 2015)

The court denied the defendants' motion for summary judgment on the ground the injured worker had substantially modified the Ryobi BTS20 table saw by removing its blade guard. Under New York law, if a safety device is designed to be removed, even for limited specific uses of the product, then the removal of the device may not constitute a material modification of the product. The blade guard on the table saw was designed to be removed for "non-through" cuts, and the operator's manual explained how to remove the guard for this limited purpose. While the manual made it clear that the user should not make "through" cuts without the guard in place, the court concluded that under New York law the removability of the blade guard gave rise to a question of fact as to whether it was the defective design of the saw rather than the failure to have the blade guard in place that proximately caused the worker's injury.

Beltran v. Techtronic Industries North America, Inc., No. 13-CV-5256-RJD-RER, 2015 WL 3651099 (E.D.N.Y. June 11, 2015)

The court denied the defendants' motion for summary judgment on the ground Beltran's use of the Ryobi BTS10 table saw without a blade guard constituted a substantial modification for which they were not liable, finding "the relatively easy removability of the blade guard gives rise to an issue of fact as to whether the saw was defectively designed." Although the blade guard was designed to be removed only for non-through cuts, "[if] a safety device is designed to be removed, even for limited, specified uses of the product, then the removal of the device may not constitute a 'material modification' of the product" that might otherwise preclude the defendants' liability. "[T]here are tradeoffs when a product's safety mechanism is not permanently affixed. That is, a product may be defectively designed if the removability of its safety features, though providing increased utility, nonetheless makes the product unreasonably dangerous."

Duval v. Delta International Machinery Corp., No. 1:13-CV-4270-GHW, 2015 WL 4522911 (S.D.N.Y. July 27, 2015)

Relying on Beltran, the court denied Delta's motion for summary judgment on a number of grounds, including on its substantial modification defense, finding that Duval's employer did not modify a safety feature, but removed a 3-in-1 guard on the Delta Unisaw table saw that was designed to be removable in order to make certain cuts.

DESIGN DEFECT; ISSUES OF FACT DEFEATING SUMMARY JUDGMENT

Nathan v. Techtronic Industries North America, Inc., No. 3:12-CV-00679, 2015 WL 679150 (M.D. Pa. Feb. 17, 2015)

The court denied the defendants' motion for summary judgment on Nathan's design defect claims. At the time of the accident, Nathan was not using the blade guard assembly on the Ryobi TS2400-1 table saw, which he removed because it interfered with his ability to make narrow cuts. The evidence showed the manufacturer had been aware for at least ten years prior to Nathan's injury that users of table saws often removed the blade guard due to problems with its design. Further, Nathan argued his injuries would have been avoided or significantly lessened had the table saw incorporated flesh detection technology. The court found there was a triable issue whether the failure to incorporate flesh detection technology rendered the saw defective, because of factual disputes as to whether flesh detection technology was feasible for small, lightweight table saws, whether the technology could be incorporated at a reasonable cost, and whether the risk of harm outweighed the cost of implementing flesh-detection technology.

DESIGN DEFECT; LACK OF INTERLOCK DEVICE

Chavez v. Delta International Machinery Corp., 130 A.D.3d 667, 13 N.Y.S.3d 482 (N.Y. App. Div. 2015)

Chavez alleged Delta's table saw was defective because it lacked an interlock device that would have rendered the saw inoperable without its guard in place. Noting New York courts consistently hold that table saws not equipped with an interlock device are not defective, the court overturned the lower court's denial of Delta's motion for summary judgment on Chavez's design defect claim. In considering Chavez's claim that an interlock was a suitable alternative design for the saw, the court explained an interlock device on the table saw would make the saw unusable for certain cuts, thereby impairing its functionality. Chavez presented testimony from his expert that the use of an interlock would not have hampered the saw's functionality, because the saw could have been used for "almost all types of cuts." But this testimony failed to raise a triable issue of fact because there necessarily would still be some types of cuts that could not be done with the guard in place and, therefore, the functionality of the saw would still be hampered.

DESIGN DEFECT; FAILURE TO IDENTIFY PRODUCT, PRODUCE EXPERT TESTIMONY, AND PRODUCE EVIDENCE OF CAUSATION WARRANTED SUMMARY JUDGMENT FOR MANUFACTURER

Williams v. Techtronic Industries North America, Inc., No. 12–11502, 2014 WL 2865874 (D. Mass. June 23, 2014)

The court granted the manufacturer's motion for summary judgment in an action filed by the user of a Ryobi cordless drill and charger set who alleged they caused a fire that destroyed his barn and farming equipment. Williams alleged that when the drill's battery died while he was using it, he put the battery in the charger and replaced it with a second battery, and after he finished using the drill he placed it back on the workbench in his barn. The fire occurred thirty to forty-five minutes later. The barn contained other electrical items including heaters, lights, electrical outlets, a well pump, an air compressor, a band saw that was plugged into the wall, a bench grinder, a drill press, a welder, and a fuse box, as well as eight tons of fertilizer, gasoline and diesel. Because Williams testified during his deposition that he did not know the model number of the drill, the charger, or the battery, the court held he could not sufficiently identify the product to allow his claims to go to trial, and Williams' later identification of the drill as model P200 was not based on any admissible evidence.

Even if Williams had sufficiently identified the product, the court held summary judgment would still be appropriate because he failed to demonstrate the manufacturer negligently designed the P200 drill or that the drill was unreasonably dangerous, by failing to produce admissible expert testimony as to the alleged defect. Nor did Williams introduce specific, admissible evidence of causation. Testimony by a fire investigator that the fire appeared to have originated in the area of the workbench, which was

where the battery and charger were located, and that the battery showed signs of failure, were not sufficient proof of causation to support Williams' claim, particularly given the investigator's conclusion that the cause of the fire was undetermined.

COMPLIANCE WITH INDUSTRY AND GOVERNMENT STANDARDS; PRESUMPTION OF LACK OF DEFECT

Fortune v. Techtronic Industries North America Inc. et al., No. 2:13-cv-00813, 2015 WL 2201782 (D. Utah May 11, 2015)

The court granted the defendants' motion for summary judgment on Fortune's strict products liability and negligence claims based on the defective design of the Ryobi BTS21 table saw he was using at the time he was injured. Fortune had argued the saw's blade guard was inadequate and lacked flesh detection technology. Under Utah law, the saw was presumptively not defective due to its compliance with industry (ANSI, UL) and government (CPSC) safety standards and regulations. Fortune failed to rebut that presumption with evidence showing an ordinary consumer would not have appreciated the danger of a table saw's rotating blade. That the saw's blade guard broke during a violent kickback, the risk of which cannot be completely eliminated, did not establish the saw was unreasonably dangerous.

FAILURE TO WARN; USERS' ACTUAL KNOWLEDGE OF DANGER

Hilaire v. DeWalt Industrial Tool Co., 54 F. Supp. 3d 223 (E.D.N.Y. 2014)

The court granted DeWalt summary judgment on Hilaire's failure to warn claim, finding Hilaire produced no evidence the warnings accompanying the DeWalt DW745 Heavy-Duty 10-inch table saw were inadequate. To the contrary, labels on the saw warned users, "Danger! Keep hands away from blade," and "to prevent kickback, use the blade guard and splitter for all through sawing," and "keep hands out of the line of the sawblade." Moreover, Hilaire admitted he was aware of the risk of injury associated with using the saw without a guard, and he had read and understood the warning labels on the saw. The court concluded such facts demonstrated the saw's warnings were adequate as a matter of law.

Nathan v. Techtronic Industries North America, Inc., No. 3:12-CV-00679, 2015 WL 679150 (M.D. Pa. Feb. 17, 2015)

Nathan sued the defendants for injuries sustained while he was attempting to make a rip cut through a narrow piece of wood while using a Ryobi TS2400-1 table saw. The saw came with an operator's manual and on-product labels that contained safety warnings regarding proper use of the saw's blade guard assembly and instructions on how to make rip cuts. Because the evidence showed Nathan had read the manual several times and was aware of the dangers posed by the saw's rotating blades, the court granted the defendants summary judgment on Nathan's failure to warn claim.

Shamir v. Extrema Machinery Company, Inc., 125 A.D.3d 636, 3 N.Y.S.3d 389 (N.Y. App. Div. 2015)

The court granted Extrema summary judgment on Shamir's failure to warn claim, finding the danger of using a table saw without its blade guard was readily discernible to Shamir, who was a professional cabinetmaker with 26 years of experience and had worked with similar table saws for more than 20 years. The court denied Extrema summary judgment on Shamir's design defect claim, however, because Shamir created an issue of fact by submitting an expert's affidavit stating that, at the time the subject saw was manufactured, an alternative design was available in the form of a permanent overarm blade guard.

FAILURE TO WARN; OPEN AND OBVIOUS DANGER

Newell v. Ryobi Technologies, Inc., No. 1:13-cv-8129-GHW, 2015 WL 4617184 (S.D.N.Y. Aug. 3, 2015)

Newell sued the defendants for strict liability for failure to warn of the risk and dangers associated with using the Ryobi CSB133L 7¼ inch circular saw one-handed. The defendants contended the adequacy of the warnings was irrelevant because the hazards related to the circular saw were open and obvious and Newell was a knowledgeable user. The court disagreed, finding the defendants failed to establish the risks associated with operating the saw with one hand were open and obvious. Moreover, the evidence raised questions as to Newell's experience using power tools, as well as his ability to read the written warnings provided. Consequently, the court denied the defendants summary judgment.

STATUTES OF LIMITATIONS

Simpson v. Robert Bosch Tool Corp., No. 12-CV-05379-WHO, 2014 WL 985067 (N.D. Cal. Mar. 7, 2014)

Simpson was injured in 2009 while using a table saw without its blade guard attached, and filed suit in 2012, almost one year after expiration of the applicable limitations period. Simpson argued his claim was not barred because the limitations period did not begin to run until he first became aware the table saw was defective through an advertisement on television in November 2011 regarding litigation concerning table saws. He alleged that prior to that time he had believed he was injured simply as a result of an accident with the saw. Simpson's deposition testimony demonstrated he knew when he was injured in 2009 that the blade guard was inadequate, that the table saw did not operate properly with the blade guard installed, that operating the saw without the blade guard posed a potential for serious injury, and that his operation of the saw without the blade guard caused his injuries. The court granted summary judgment for Bosch because, even if Simpson did not view the saw as defective at that time, he had sufficient information in 2009 to put a reasonable person on notice that his injuries were caused by the table saw's deficient design. The court reasoned Simpson should have suspected

that, if in order to use a product properly the safety mechanism must be removed, something must be wrong with the product. Further, Simpson immediately knew the extent of his injuries and that the ultimate cause of his injury was his operating the saw without using its blade guard.

Kennedy v. Techtronic Industries North America, Inc., No. CIV.A. 8:13-00871, 2014 WL 958035 (D.S.C. Mar. 10, 2014)

The court denied the defendants' motion to dismiss the complaint on statute of limitations grounds. Kennedy's complaint alleged he did not know the table saw was defective due to a lack of flesh detection technology and/or a riving knife until he saw a television advertisement in 2012, and the mere fact of contact between his hand and the spinning blade of a table saw did not alert him to the potential existence of any defect in the saw. The court held such allegations were sufficient to withstand dismissal.

JAMES DARTLIN "DART" MEADOWS
PARTNER | ATLANTA

(404) 962-3529
dmeadows@balch.com

James Dartlin "Dart" Meadows, a partner with the law firm of Balch & Bingham LLP, has developed a national practice representing woodworking machinery manufacturers, distributors and dealers in product liability litigation throughout the United States. He has served as national counsel for three of the world's largest manufacturers and distributors of industrial woodworking machinery. He has served as co-chair of the Hand and Power Tool Product Liability Section of the DRI, chair of the Product Liability Section of the State Bar of Georgia and is currently Chair of the Product Liability Committee of the Georgia Defense Lawyers Association. Dart regularly speaks to industry groups about product liability prevention and defense issues.