

ATTENDANCE NOTE

File: Walker
Date: 13.11.03
Re: Professional Negligence

PER attending Mr Allsopp from JCB on the telephone. Mr Allsopp said that the essence of his response to my enquiries was that Mr Walker should not have got up on the JCB with the arm not lowered in any event. He has advised Mr Walker of this before. PER saying that the purpose of the enquiry was to determine whether or not there was in fact a safety step that was available to put on the side of the machine because Mr Walker's argument was that had such a safety step been provided by his employer, he would not have need to have put his foot where he did. Mr Allsopp said that a second safety step was available in that particular model. PER asking whether or not the holes in the chasis beneath the hydraulic arms was for the positioning of the step and Mr Allsopp confirmed that they were.

We agreed that it would be inappropriate under the circumstances for me to go to JCB with Mr Walker as he had requested. Rather Mr Allsopp will send to me details of the safety step that he has from the handbook and I will then arrange to speak to Mr Allsopp on the telephone with Mr Walker present.

Time engaged in all, attending on the phone & dictating note: 1 unit

Statement

I am currently involved in proceedings for professional negligence against my former solicitors and barrister arising out of injuries I received on 17 January 1990 on the basis that I was forced into a situation of accepting damages on a day when a trial was only listed to deal with issues of liability.

During investigations into that case and the earlier accident case I discovered in 2003 that the manufacturers of the machine upon which I suffered my accident had sometime in the late 1980's issued an extra step for the JCB Site Master Machines.

If such a step had been available on the machine that I was working on it would have avoided the need for me to place my left foot onto the chassis of the machine (I was stood with my right foot on the step attached to the side giving access to the cab and had to place my left foot to stay in balance to refuel the machine by putting my left foot onto the chassis underneath a hydraulic arm and it was when the hydraulic arm was dropped that my foot was crushed and this led to progressive amputations to above the knee).

If the step had been fitted I could have stood with my right foot as it was but my left foot would then have been secure on a gridded metal step just beneath the chassis member and would not have required me to put my foot anywhere near the hydraulic arms so that even if the hydraulic arms had descended then my foot would not have been trapped.

I am enclosing with this application a copy of photographs of the JCB which clearly show the holes that are available for the installation of this step. I also enclose a copy of a letter from JCB setting out the dimensions of the step and its availability.

It is my belief that this step should have been compulsory issue to all owners of this type of machine (if the photographs are closely examined it can be seen that it was fairly standard practice, in my view, for people to stand on the chassis member because this is scuffed and that it gives a foreseeable risk to workers in so standing where there is a hydraulic arm in the immediate vicinity).

This was never discovered by my legal advisors or myself prior to the date of the original trial it has only come to light subsequently. I discovered it in 2003. I also feel that this was a clear modification for safety reasons and should therefore have been a compulsory part of the manufacture of this type of machine.

It should have been a part of the product.

The absolute limit for commencing proceedings is 17 January 2005. I therefore ask for Legal Aid to enable proceedings to be issued as a protective measure which would give a further period of time to enable expert evidence to be obtained.

This is not just of interest to me but I believe it is an industry wide safety issue although I have not had the opportunity of carrying out detailed investigations to see

whether other persons have been injured in a similar way to what has occurred in my case.

I attach the Particulars of Claim in the original accident case and in the professional negligence case to give the detailed background to what occurred and the value potentially to me as an individual.

I believe that the Limitation Act 1980 Section 14A applies. I did not know until JCB's letter of December 2003 there could be a potential defendant and the damage suffered was due to the possible negligence on their part of not ensuring the safety step was placed on all their machines.

I therefore seek to investigate the case on the grounds of negligence action or omission by JCB and/or product liability.

Although I have never accepted that there was any contributory negligence on my part ~~and~~ defendants have argued this and I concede that various people that have been involved in advising me in my case have said that probably there was some contributory negligence.