

S00-07-01

Negligence: Petroleum Storage Tank Exploded**Settlement: \$8,050,000**

Plaintiff Attorneys: Robert Bruce Arnold, Lawrence R. Booth & Donald Joseph Beck
(Booth & Koskoff), Torrance (310) 515-1361

Defendant Attorneys:

for Ultramar: Clifford Schaffer & David Frishman
(Schaffer & Lax), Los Angeles (323) 934-4300

for TSM: Michael Phillips & Jeanette Jerles
(Anderson, McPharlin & Phillips), Los Angeles (213) 688-0080

for Jacobs Engineering/J.E. Merit: Mark Geraghty & Mimi Lee
(Thelen, Ried & Priest), Los Angeles (213) 621-9800

for Matrix Services: Mitchell Popham & Jackie Redin Klein
(Lord, Bissell & Brook), Los Angeles (213) 687-6757

Court: Long Beach **Mediator:** Viggo Boserup **Date:** 4/3/00

Case: Jerry Leavitt and Donna Leavitt v. Ultramar Corporation,
TSM Corporation, Jacobs Engineering and Matrix Services NC 021328

Facts:

10/24/96: Plaintiff was a 44-year-old foreman. Defendant Ultramar Corporation hired Plaintiff's employer Matrix Services, Inc., to rebuild their Tank 4, an emptied and cleaned hydrocarbon storage tank at their Wilmington storage facility. "Fire Watch" for this construction job was provided by Defendant Team Safety Corporation. Engineering services were provided by Defendant Jacobs Engineering/J.E. Merit. At the time of the accident Plaintiff was atop adjacent Tank 2 preparing to reattach a metal catwalk which spanned about 20' to Tank 4. The catwalk had been cut away with a torch from the two tanks a month before leaving two 18" metal stubs protruding from the insulated roof of Tank 2. Tank 2 was filled with over 8,200 barrels of kerosene-type product. Plaintiff made four "tack welds" at the connection of the catwalk and the two metal stubs. He then stood leaning on the railing at the perimeter of Tank 2, waiting for some pieces of scrap channel iron to be brought to him. Two to five minutes later, as he continued to wait, the tank on which he was standing exploded, hurling him 45 feet to the ground.

Injuries: Fractured L3, 4 & 5 vertebrae, crushed L3 vertebra over 50%, pelvis fracture in 3 places, left arm dislocated and fractured elbow, crushed bones between elbow and wrist, dislocated and fractured left wrist with resulting severe nerve damage to ulnar nerve, dislocated and fractured right elbow, left knee fractured at plateau, broke both tibia and fibula which came through skin between knee and ankle, crushed calcaneus of right foot, lacerations on face, gouge above left eye, burns to nose and right ear. **Treatment:** 3 months in hospital, 13 surgeries and many plates, pins and screws between elbow and wrist. **Residuals:** Limited range of motion of both forearms, surgically altered foot inhibiting movement and balance and 100% disability.

Medical Costs: \$581,000 with total workers compensation lien of \$644,000

Loss of Earnings: \$906,000

Contentions:

Plaintiff claimed Ultramar had no timely internal inspection of Tank 2 for corrosion. Post accident inspection showed significant corrosion. Searches made by Ultramar for the source of vapors following complaints of odors by workmen were inadequate and the Ultramar monitors used to detect dangerous gases were not properly calibrated and maintained. The product in Tank 2 was kept at too high a temperature, enhancing its explosiveness. Ultramar knew the catwalk was removed with a torch and should have expected welding would be used to reattach it. They failed to follow their own permit system which required a "job walk" before issuance to discuss work and methods. Team Safety failed to exercise their authority to stop work when they knew proper permitting procedures were not being followed. Jacobs/J.E. Merit failed to exercise control over the safety aspects of construction operations.

Defendant argued the accident was the fault of either Plaintiff's employer or Plaintiff for having Plaintiff weld on a "live" tank. Plaintiff's employer should never remove or replace the catwalk without making drawings and detailed plans. There was no need to weld at all as the catwalk pieces should have been bolted or welded together on the ground and later lifted in place by a crane. Ultramar didn't know the catwalk had been hot cut when removed, and would not have permitted it if it had known. Ultramar wasn't told that welding would be used to reattach the tank. An ultrasound inspection by an independent contractor of the insulated Tank 2 in 1994 showed no significant corrosion. **Team Safety argued** they were on site only to wet down an area with hoses when welding would be done. **Jacobs/J.E. Merit argued** they had no safety responsibility, but were only asked to provide technical assistance. Plaintiff was still capable of working with a computer in engineering drafting.

Settlement:

\$8,050,000 total cash and guaranteed structure payout

\$3,600,000 present value

Note:

Workers' compensation carrier was paid \$75,000 in satisfaction of their \$750,000 lien. An additional \$750,000 approximately was paid to Ultramar on their cross-complaint for damage to Tank 2.

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