



Employer Liability In Alabama:
An Attorney's Perspective

Attorney Information



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Al litigates a variety of disputes including those involving catastrophic injury, wrongful death, commercial motor vehicle accidents, products liability, premises liability, Carmack Amendment claims, property damage, insurance coverage, and employment-related claims.

He represents Class I and short-line railroads in suits brought under the Federal Employers' Liability Act, FRSA whistleblower claims, trespasser injuries, property damage claims, and other third-party injuries.

He is also experienced in regulatory compliance for trucking companies under the Federal Motor Carrier Safety Regulations and for issues affecting the rapidly evolving logistics industry.

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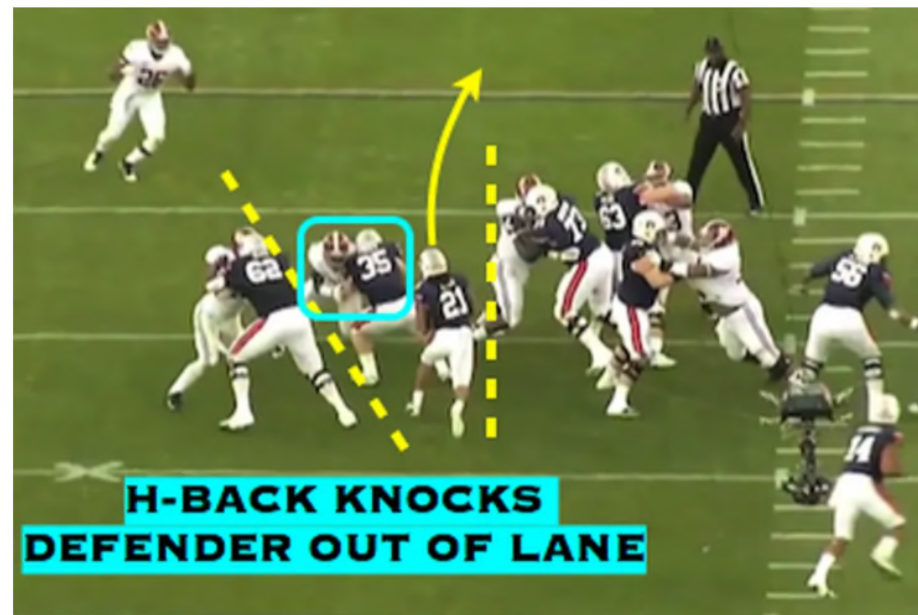
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Maddie represents heavy manufacturers and industry employers, litigating a variety of disputes involving catastrophic injury, wrongful death, toxic exposure, property damage, products liability, premises liability, insurance coverage, and commercial motor vehicle accidents.

She is experienced in a wide range of commercial and business litigation issues in both state and federal courts. She regularly handles complex discovery matters and has experience drafting and arguing appeals on behalf of her clients before the Alabama Supreme Court and the Eleventh Circuit Court of Appeals.

It Used to Be So Simple...

Football 101: Why Power Running Works



ARTICLE

Mike Tomlin On Steelers' Defense: 'Nothing Mystical' To Stopping The Run Better



By Dave Bryan

Posted on October 26, 2021 at 4:10 pm



ALABAMA CRIMSON TIDE FOOTBALL



Is the 2011 Alabama Crimson Tide Defense the Best Ever?

MATT RYAN 

JANUARY 11, 2012

The Loopholes Are Exposed...

How the spread offense conquered college football, from Hal Mumme to Joe Burrow

Why defenses are trying to Stack up with spread offenses dominating throughout college football

Is Alabama's style of defense neutralized by the spread?

Brett Weisband | 7 years ago



For the second straight year, Alabama was exposed in its final two games of the season. In 2013, Auburn's offense made the Crimson Tide defense pay all game in the Iron Bowl before breaking them with the Kick Six, followed by Oklahoma running laps around the Tide in the Sugar Bowl. Auburn once again tore Alabama's defense to shreds in the Iron Bowl, although Alabama escaped with a win this time around. Once again in the Sugar Bowl, Alabama's opponent, this time Ohio State, put a hurting on the defense.

And Now Employers Must Adapt...

COLLEGE FOOTBALL

The Georgia Defense is Built to Beat the Spread

The notion Saban and his disciples can't handle spread offenses is long outdated. Here's how Kirby again followed in his mentors steps and why they will remain elite.

By [Alex Craft](#) | [@NotAlexCraft](#) | Sep 2, 2021, 5:05pm EDT

GEORGE SCHROEDER

Nick Saban is one of greatest college football coaches because of willingness to adapt

George Schroeder USA TODAY

Published 10:47 a.m. ET Jan. 5, 2019 | Updated 1:14 a.m. ET Jan. 6, 2019

The “New Normal” with Workplace Injuries

OSHA Citations



FOIA Request



In Addition to Workers' Compensation Lawsuit

- CO-EMPLOYEE LAWSUIT
- RETALIATORY DISCHARGE
- PRODUCTS LIABILITY/AEMLD
- GENERAL NEGLIGENCE/WANTONNESS CLAIMS AGAINST
 - MAINTENANCE COMPANIES / INDEPENDENT CONTRACTORS
 - AFFILIATED & PARENT COMPANIES

Machine Guarding

29 C.F.R. 1910.212 Requirements

One or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, ingoing nip points, rotating parts, flying chips and sparks. Examples of guarding methods are-barrier guards, two-hand tripping devices, electronic safety devices, etc.

Guards shall be affixed to the machine where possible and secured elsewhere if for any reason attachment to the machine is not possible. The guard shall be such that it does not offer an accident hazard in itself.

Machine Guarding

Machine Guarding protects workers

Injuries due to lack of guarding can often be serious and even fatal

“Easy Fixes” which can make our workplaces much safer



OSHA – Machine Guarding

Frequently Listed in the OSHA TOP 10 MOST CITED VIOLATIONS

- Fabricated Metal Product Manufacturing was the most-cited industry for violations of 1910.212 in FY 2019, with 423 citations, 371 inspections and \$2,409,690 in proposed penalties.
- In the number two position: Food Manufacturing, (176 citations, 166 inspections and \$1,465,678 in penalties).
- Machinery Manufacturing had 130 citations, 109 inspections and \$756,822 in penalties.
- Plastics and Rubber Products Manufacturing employers were cited 129 times, inspected 113 times and had proposed penalties of \$1,266,048.
- Wood Product Manufacturing had 86 citations, 84 inspections and \$614,815 in penalties.
- Transportation Equipment Manufacturing companies were cited 86 times for violations arising from 75 inspections, with penalties totaling \$540,515.
- Paper Manufacturing and Primary Metal Manufacturing each had 64 citations and 60 inspections, with \$513,674 and \$433,322 in penalties, respectively.
- Nonmetallic Mineral Product Manufacturing operations were inspected 52 times and earned 59 citations, with \$522,674 in penalties.
- Merchant Wholesalers, Durable Goods employers were cited 55 times from 51 inspections, with \$288,780 in penalties.

Common Scenarios

Not Following LOTO Procedures

Missing, Defective, or Loose Machine Guards

Reaching in to Clear Equipment

Unauthorized Employees Trying to Perform
Maintenance

*Inevitably: New Employee, Late Shift, Around a Holiday
(or Full Moon)*


The Full Spread Offense:

How Personal Injury and Workers Compensation Can Work Together

Maximizing the Total Net Recovery from the Workers' Compensation and Personal Injury Claims

Who You Can Sue for a Workplace Injury?

While you cannot sue your employer or co-worker, there are other parties that may be held liable for your injuries. If there are subcontractors working on the factory floor with you and their negligence leads to your injuries, you can file a personal injury suit against them. This is because they are not directly employed by your company, so they do not enjoy the protection of the workers' compensation system.



Injured on the job? Is your claim limited to workers' compensation benefits?

What Does The Law Say?

In Alabama, “co-employee” lawsuits are statutorily limited to injuries or death caused by a fellow employee’s “willful misconduct.” Ala. Code § 25-5-11.

Ala. Code 25-5-11(c)(2): The willful and intentional removal from a machine of a safety guard or safety device provided by the manufacturer of the machine with knowledge that injury or death would likely or probably result from the removal; provided, however, that removal of a guard or device shall not be willful conduct unless the removal did, in fact, increase the danger in the use of the machine and was not done for the purpose of repair of the machine or was not part of an improvement or modification of the machine which rendered the safety device unnecessary or ineffective.

What Does The Law Say?

While the statute requires “willful misconduct,” Alabama courts have allowed claims to proceed against co-employees with a lower burden of proof.

Pettibone v. Tyson, 794 So. 2d 377 (Ala. 2001), the Alabama Supreme Court cited Haisten for the proposition that Ala. Code § 25-5-11(c)(1) and (c)(2) have distinct scienter requirements. Id. at 381 (“This Court has consistently distinguished between the ‘intent to injure’ burden imposed by subsection (c)(1) and the lesser scienter burden imposed by subsection (c)(2).”).

Liability Under Section (c)(2)

Under Alabama law, to be successful on a claim under subsection (c)(2), a plaintiff must prove four elements:

- (1) The safety guard or device was provided by the manufacturer of the machine;
- (2) the safety guard or device was removed from the machine;
- (3) the removal of the safety guard or device ... occurred with knowledge that injury would probably or likely result from that removal; and
- (4) the removal of the safety guard or device was not ... part of a modification or an improvement that rendered the safety guard or device unnecessary or ineffective.

Liability Under Section (c)(2)

The term “manufacturer” may include not only the original manufacturer but also a subsequent entity that substantially modifies or materially alters the product through the use of different components or methods of assembly.

Harris v. Gill, 585 So. 2d 831 (Ala. 1991).

Under this definition = any entity adding a permanent safety guard or safety device may be considered a manufacturer.

Liability Under Section (c)(2)

The term "removal" includes the failure to install, the bypass of, or the failure to repair or maintain a safety guard.

As observed by numerous Alabama Supreme Court cases, the "removal" or "bypass" of a safety guard that is actionable under subsection (c)(2) includes the permanent alteration of a machine.

DISSECTING A COMPLAINT

DALE TURK,)
)
Plaintiff,)
)
vs.) CIVIL ACTION CASE NUMBER
) CV-10-900084
)
)
)
DAEHYUN TECH COMPANY, LTD,)
INC; HYRAM HOOKS;)
JANE WRIGHT; NICOLE MITCHELL;)
DREW FRASIER; DAEHYUNTECH)
d/b/a/ IDH CO., LTD., IDH CO., LTD.;)
R&G INDUSTRIAL SERVICES, INC.;)
JIM PARKER BUILDING CO., LTD.,)
HYUNDAI WIA CORP.; HYUNDAI)
WIA MACHINE AMERICAN CORP.;)
)
Defendants.)

PLAINTIFF'S SECOND AMENDED COMPLAINT

- NO. 1, whether singular or plural, that entity or those entities that is/are the corporate predecessor or successor or successor in interest to any of the defendants in this case, whether named or fictitious,
- NO. 2, whether singular or plural, that entity or those entities that is/are the owner(s) of the premises near where the Plaintiff was injured,
- NO. 3, whether singular or plural, that individual or those individuals, whether employed by Hysco America Co. or otherwise, that were involved in the same or similar acts and/or inactions of intentional and/or willful conduct, recklessness, negligence and wantonness as alleged against the Defendants,
- NO. 4, ~~whether singular or plural~~, that entity or those entities that is/are the master(s) or principal(s) of any of the defendants in this case, whether named or fictitious,
- NO. 5, whether singular or plural, that individual or entity or entities whose intentional and/or willful conduct, recklessness, negligence and/or wantonness proximately caused the Plaintiff's injuries,
- NO. 6, whether singular or plural, is/are that person (s) who was the supervisor of the Plaintiff at the time of the subject incident,
- NO. 7, ~~whether singular or plural~~, is/are that person (s) who was the Plant Manager of Hysco America Co., and/or that company at which the Plaintiff was employed or was working at the time of the subject incident.
- NO. 8, whether singular or plural, is/are that person (s) who was the Operations

WHO / HOW MANY WILL BE NAMED AS DEFENDANTS?

- NO. 9, whether singular or plural, is/are that person (s) who was the Safety Manager or who was responsible for safety at Hysco America Co. and/or that company at which the Plaintiff was employed or was working at the time of the subject incident,
- NO. 10, whether singular or plural, is/are that person (s) who was the Maintenance Supervisor or was responsible for maintaining the slitter machines at Hysco America Co. and/or that company at which the Plaintiff was employed or was working at the time of the subject incident,
- NO. 11, whether singular or plural, is/are that person (s) who was the Plant Engineer at Hysco America Co. and/or that company at which the Plaintiff was employed or was working at the time of the subject incident,
- NO. 12, whether singular or plural, that entity/entities or corporation/corporations or contractor/contractors or individual/individuals that designed, developed or approved the design of the subject slitter machine (or any part thereof) located on the premises of Hysco America Co., Butler County, Alabama,
- NO. 13, whether singular or plural, that entity/entities or corporation/corporations or contractor/contractors that manufactured, assembled and/or installed the subject slitter machine located on the premises of Hysco America Co., Butler County, Alabama
- NO. 14, whether singular or plural, that entity/entities or corporation/corporations or contractor/contractors that marketed, distributed, sold, imported, or had any role in the chain of distribution of the subject slitter machine located on the premises of Hysco America Co., Butler County, Alabama
- NO. 15 whether singular or plural, that entity/entities or corporation/corporations or contractor/contractors or individual/individuals that is liable for the injuries to Plaintiff under the doctrine of respondeat superior,
- NO. 16, whether singular or plural, that entity/entities or corporation/corporations or contractor/contractors or individual/individuals that is liable for the injuries to Plaintiff,
- NO. 17, whether singular or plural, that entity/entities or corporation/corporations or individual/individuals that designed and/or manufactured any component part of the subject machine located on the premises of Hysco America Co., Butler County, Alabama,
- NO. 18, whether singular or plural, that entity or those entities who or which provided any insurance coverage, of whatever kind or character, to any of the named or fictitious defendants herein,
- NO. 19, whether singular or plural, that individual/individual and/or entity/entities and/or corporation/corporations that designed or installed any product that contributed to Plaintiff's injuries,
- NO. 20, whether singular or plural, that individual/individual and/or entity/entities and/or corporation/corporations that removed and/or failed to provide a safety guard from the subject machine which caused Plaintiff's injuries,
- NO. 21, whether singular or plural, the person or entity who serviced or repaired the subject slitter machine (or any part thereof) located on the premises of Hysco

SAFETY MANAGER

MAINTENANCE

PLANT ENGINEER

**MANUFACTURER OR
SELLER OF MACHINE,
AS WELL AS ANY
CONTRACTORS**

**SERVICE/REPAIR
COMPANIES**

America Co., Butler County, Alabama,

- NO. 22, whether singular or plural, the person or entity who altered or modified the subject slitter machine (or any part thereof) located on the premises of Hysco America Co., Butler County, Alabama,**
- NO. 23, whether singular or plural, the person or entity who was responsible for providing instructions for use or issuing adequate warnings to persons of the dangers associated with defects of the subject slitter machine located on the premises of Hysco America Co., Butler County, Alabama,**
- NO. 24, whether singular or plural, the person or entity who issued any warranty with respect to the subject slitter machine located on the premises of Hysco America Co., Butler County, Alabama,**
- NO. 25, whether singular or plural, the person or entity who performed any consulting work referable to the design, manufacture, and/or assembly of the subject slitter machine located on the premises of Hysco America Co., Butler County, Alabama,**
- NO. 26, whether singular or plural, that person or entity who tested, inspected, approved or issued the approval of the subject slitter machine (or any part thereof) located on the premises of Hysco America Co.**
- NO. 27, whether singular or plural, that person or entity who is the alter ego to any of the named defendants or fictitious defendants described herein,**
- NO. 28, whether singular or plural, that person or entity who is known and doing business as Daehyun Tech Co., Ltd. Inc. or by any other substantially similar name.**

Defendants.

STATEMENT OF FACTS

41. The Plaintiff adopts and incorporates by reference all allegations of Paragraphs 1 through 34 as if they were fully set-forth herein.

42. Hysco America Co. Company ("Hysco") is an automotive supplier that owns a Plant in Butler County, Alabama that manufactures/produces supplies for Hyundai.

43. On or about September 2, 2009, Plaintiff, Dale Turk, was working in the line and scope of his employment performing his day to day job duties around the slitter line.

44. Defendant Hiram Hooks was the immediate supervisor of the Plaintiff during his course of employment with Hysco America Co.

45. Defendant Jane Wright instructed Defendant Nicole Mitchell to start up the slitter

machine on which the Plaintiff was injured.

46. The slitter machine was designed, manufactured, assembled, tested, marketed, and/or sold and/or distributed by Defendants Hyundai Wia, Hyundai Wia American, Daehyun Tech, Daehyun Tech d/b/a/ IDH, and/or IDH.

47. Defendant R&G Industrial Services, Inc. was involved in the installation of the subject slitter machine.

48. Defendant Jim Parker Building Co., Inc. was responsible for the construction of the Hysco plant as well as the installation of all equipment, including the subject slitter machine.

49. The Plaintiff learned of the existence of Hyundai Wia's involvement in this case upon receipt of HYSKO's Rule 45 production on Wednesday, January 30, 2013 at 40 p.m. That production included a copy of a contract between HYSKO and Hyundai Wia for the purchase and installation of the slitter line, including the slitter machine. The Plaintiff confirmed the current name of Hyundai Wia on Thursday, January 31, 2013 and filed this Second Amended Complaint on Friday, February 1, 2013.

50. Defendant Nicole Mitchell was the person who turned on the slitter machine while the Plaintiff's hand was in the position to be drawn in to a nip point.

51. Plaintiff was working around the slitter line with his hands in the area of the rollers. The slitter machine was not on at the time. Without ample warning to the Plaintiff, Defendant Wright instructed Defendant Mitchell to turn on the slitter machine, which Defendant Mitchell did.

52. As a consequence of these actions, the slitter machine pulled the Plaintiff's hand into the running machine right into the unguarded nip point.

CAUSES OF ACTION

**Count 1: Plaintiff's Claims Against Defendants Hooks,
Wright and Mitchell and Fictitious Defendants
Pursuant to Ala. Code § 25-5-11(c)(1)**

58. By this reference, the plaintiff incorporates each and every allegation and averment set forth above as if they were fully set forth herein.

59. Defendants Hooks, Wright, Mitchell, Frasier, and Fictitious Defendants 1-28 were

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all co-employees of the Plaintiff.

60. Defendants Hooks, Wright, Mitchell, Frasier, and Fictitious Defendants 1-28 had a duty to use reasonable care to protect the Plaintiff from work place injuries that are foreseeable.

61. Defendants Hooks, Wright, Mitchell, Frasier, and Fictitious Defendants 1-28 knew or should have been aware of the potential hazards associated with the slitter machine and its unguarded nip point.

62. Nevertheless, Defendants Hooks, Wright, Mitchell, Frasier, and Fictitious Defendants 1-28 breached their duties to the Plaintiff by intentionally, willfully and/or recklessly by requiring Plaintiff to work in an area with unguarded nip point and provided him with inadequate equipment and/or safety and by turning on the machine when the Plaintiff's hand was

**Count 2: Plaintiff's Claims Against Defendants Hooks,
Wright, Mitchell and Fictitious Defendant(s)
Pursuant to Ala. Code § 25-5-11(c)(2)**

66. By this reference, the Plaintiff adopts and incorporates each and every allegation and averment set forth above as if they were fully set forth herein.

67. While in the line and scope of their employment, Defendants Hooks, Wright, Mitchell, Frasier, and Fictitious Defendants 1-28 intentionally removed and/or failed to provide a safety guard for the dangerously exposed nip point on the slitter machine.

68. Defendants Hooks, Wright, Mitchell, Frasier, and Fictitious Defendants 1-28 willfully caused the Plaintiff's injuries under the meaning of the above authority because they willfully removed, bypassed or failed to install these safety devices, which would have prevented the Plaintiff's injuries. In addition and in the further alternative, Hooks, Wright, Mitchell, Frasier, and Fictitious Defendants willfully failed to warn the Plaintiff about the dangers of the subject equipment.

69. Said breach by Defendants Hooks, Wright, Mitchell, Frasier, and Fictitious Defendants 1-28 (or their conduct in combination with the conduct of other defendants) proximately caused the Plaintiff's injuries.

70. The actions and inactions of Hooks, Wright, Mitchell, Frasier, and Fictitious Defendants 1-28 were intentional, wanton, malicious, fraudulent, and/or oppressive.

Example of Co-Employees Named:

10. Several managers were responsible for providing the necessary safety mechanisms and safeguards to prevent injuries to employees like the plaintiff. These safety guards and mechanisms had been in existence for some time, and there is no logical reason that were excluded from this PM 1 Winder. Patrick Moon served as the Occupational Health Safety Manager at the plant. John Christopher Dunham served as the Paper Manufacturing and Logistics Manager at the plant. Mick Forbes served as the Operations Manager for the plant. Darrell Daubert served as General Manager for the plant. Frank Fields served as Safety Coordinator HR and Training at the plant. James Strange served as Senior Director of Global Health and Safety. These defendants, individually and/or collectively, had responsibility to provide safeguards and protection to the plaintiff. All of these individuals had responsibility for repair, maintenance, upkeep, safety and control over the plaintiff's work environment and the items, machinery, tools, or other devices used to perform the plaintiff's job, which included any maintenance, repair, safety, upkeep and control over the PM 1 Winder and the safety apparatuses associated with that machine.

48. On or about March 5, 2017, and for some time prior thereto, Defendant Todd Green was the president of WKW Erbsloeh North America, LLC, responsible for overseeing operations at WKW Erbsloeh's Pell City, Alabama Facility.

49. On or about March 5, 2017, and for some time prior thereto, Defendant Timothy Kendrick was the Operations Manager for WKW Erbsloeh North America, LLC, likewise responsible for overseeing operations at WKW Erbsloeh's Pell City, Alabama Facility.

50. On or about March 5, 2017, and for some time prior thereto, Defendant Kelly Little was the Safety Manager for WKW Erbsloeh North America, LLC, responsible for overseeing all aspects of operations at WKW Erbsloeh's Pell City Facility potentially affecting employees' safety.

51. Defendant Jeff Lacher was Defendant Kelly Little's predecessor as the Safety Manager at WKW Erbsloeh North America, LLC, responsible for overseeing all aspects of operations at WKW Erbsloeh's Pell City Facility potentially affecting employees' safety. The entirety of Defendant Jeff Lacher's tenure as Safety Manager postdated the installation of Afotek's cure oven at WKW Erbsloeh's Pell City Facility, in approximately April 2011. Afotek's cure oven was thus in use at WKW Erbsloeh's Pell City Facility throughout much, if not all, of Defendant Jeff Lacher's tenure as Safety Manager.

52. Defendant Ron Bombard was Defendant Jeff Lacher's predecessor as the Safety

Interrogatory: Identify all of your employees past and present responsible for supervision, maintenance, etc. at your facility.


Co-Employees With Safety Responsibilities Who May Be Sued

- ✓ *Company Owner*
- ✓ *President*
- ✓ *Vice President of Finance*
- ✓ *Vice President of Fabrication Operations*
- ✓ *GM / Ops Manager*
- ✓ *Safety Director*
- ✓ *Maintenance Dept Supervisor / Employees*
- ✓ *Pltf's Shift Supervisor*

Pulled from Article: "ANATOMY OF AN ALABAMA CO-EMPLOYEE WILIFUL MISCONDUCT CASE FOR REMOVAL OR FAILURE TO INSTALL, REPAIR, OR MAINTAIN A SAFETY GUARD OR DEVICE"

Using OSHA / ANSI

- OSHA Citations
- Violations of ANSI Standards
- What Other Companies Use, Etc.

- 
16. At the time of the accident and injury, Alto Snell was making an average weekly wage of at least \$400.00.
 17. On or about February 2, 2019, Mr. Snell was standing next to a Cincinnati Mechanical Press Brake 250 ton machine (“the Press Brake”, “subject press brake machine” or subject machine”) in the line and scope of his employment when a co-employee activated the Press Brake causing the die to come down on his arm, wrist and/or hand crushing and amputating it. Prior to February 2, 2019, the Press Brake had been altered by one or more of the Defendants in that one or more safety guards or safety devices were removed or otherwise rendered inoperable creating a hazardous condition and a high probability and likelihood of serious physical injury or death. The Defendants violated the industry standard for safe operation of a mechanical press brake machine by removing or otherwise rendering inoperable one or more safety devices. By their actions, the Defendants also violated OSHA regulations and ANSI standards for the safe operation of a mechanical press brake machine.
 18. Defendants violated Section 25-5-11(c)(1) and/or 25-5-11(c)(2), *Code of Alabama, 1975*, by allowing the Press Brake to be operated when they knew or should have known that one or more safety guards or safety devices were removed or otherwise

Using OSHA / ANSI

20. Upon information and belief, Gate #80 of TWB 3 line, on the premises of plaintiff's employer was not properly operating. Upon information and belief, defendants and/or fictitious defendants A-P placed a chain and a lock on the gate but failed to fix and/or maintain said safety device leading up to and including the date plaintiff Anthony Crenshaw was injured. Upon further information and belief, defendants and/or fictitious defendants continuously inspected Gate #80 and did not document the safety deficiency for

approximately six months. These defendants were in charge of or responsible for plant safety, supervision and maintenance of the plaintiff's workplace.

21. On/about July 11, 2019, plaintiff Anthony Crenshaw hit the appropriate stop button to enter the gate. When he attempted to pull a suction cup from the robot within the gate, the robot continued in motion, and hit him in the head. As a result, he suffered a head injury, headaches, seizure type episodes and memory loss, post-concussion syndrome, depression, anxiety, loss of function and vision issues. He suffered past lost wages, future lost wages, medical costs, future medical costs, mental anguish, loss of access to job market and suffers from a significant disability.

22. Plaintiff followed the procedures as instructed and/or put in place by defendants, but due to their violations of §25-5-11 and/or the negligence/wantonness of defendants and a nonfunctioning or inoperable interlock due to failure to correct or maintain by defendants and/or fictitious defendants, he was injured and damaged as outlined above.

There may have been other safety violations that will be determined in discovery. These Defendants violated OSHA Standards, ANSI Standards, and other applicable industry standards.

THE “GRAND SLAM”

11. On or about April 7, 2014 and prior thereto, without Plaintiff Battle's knowledge, Defendant Koch Foods and Defendant Johnny Gill had its employees insert a metal pole into the safety gate's housing thereby bypassing a safety device on the machine and allowing the chicken dumpster machine to continue operating while the safety gate was open.

12. At all material times relevant hereto, Defendant Johnny Gill walked the plant on a daily basis to inspect the machines used at Koch Foods' Montgomery, AL location where he worked, including not limited to the chicken dumpster machine, for any safety deficiencies.

13. At all material times relevant hereto, Defendant Johnny Gill knew or should have known that Koch Foods employees had inserted a metal pole into the safety gate's housing thereby bypassing a safety device on the machine and allowing the chicken dumpster machine to continue operating while the safety gate was open.

14. On the day that Plaintiff was injured, he reported said injury to the Defendant and thereafter went to the emergency room of a local hospital in Montgomery, Alabama.

15. On or about April 10, 2014, the Defendant put its Workers Compensation carrier on notice of Plaintiff Battle's injuries once Plaintiff sought Workers Compensation coverage for his on-the-job injuries.

16. On or about April 11, 2014, in Montgomery, Alabama, Plaintiff Battle met with Defendant's employees Bruce Carmin, Stanley Biggers and Subhash Sengupta and Plaintiff was asked by these three employees to give a written statement concerning

COUNT FIVE
CO-EMPLOYEE LIABILITY

57. The Plaintiff re-alleges and incorporates by reference paragraphs 1-51 above with the same force and effect as if set forth here in full.

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58. Defendants Johnny Gill and Fictitious Defendants “A” through “C” were employed with Koch Foods. Thus, these Defendants were Leon Battle’s co-employees.

59. Defendants Johnny Gill and Fictitious Defendants “A” through “C” were required by law to maintain safety devices and equipment so that employees like Mr. Battle and other employees could do their jobs safely. Instead of maintaining safety devices for the subject machine, these Defendants removed, bypassed, and/or failed to maintain safety features designed to prevent the very type of injury sustained by Mr. Battle.

COUNT ONE
WORKERS COMPENSATION-RETALIATORY DISCHARGE

33. The Plaintiff re-alleges and incorporates by reference paragraphs 1-29 above with the same force and effect as if set forth here in full.

34. On or about April 16, 2014, Plaintiff was terminated from his employment with Defendant Koch Foods after the Plaintiff sought to recover Worker's Compensation benefits from Defendant and/or otherwise exercised his rights to recover such benefits under the Alabama Workmen's Compensation Act (hereinafter referred to as "the Act").

35. The Plaintiff alleges that his employment was wrongfully terminated by the Defendant as a direct result of his making a claim for Workmen's Compensation Benefits and/or exercising his rights to do so and hence, his termination was retaliatory and illegal, and in violation of Alabama Code Section 25-5-11.1 (1975).

36. Further, the Plaintiff alleges that the Defendant terminated Plaintiff's employment solely because Plaintiff claimed rights under the Act, and that such termination was done in violation of said laws with intentional and/or reckless disregard of same and of Plaintiff's rights thereunder.

37. The Plaintiff avers that Alabama Code Section 25-5-11.1 (1975) in effect creates an independent cause of action against Defendant for said Defendant's intentional and/or wrongful conduct in terminating Plaintiff, and that said cause of action is not barred by the exclusivity provisions of the Act.

COUNT TWO
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

39. The Plaintiff re-alleges and incorporates by reference paragraphs 1-38 above with the same force and effect as if set forth here in full.

40. The Defendant intentionally inflicted emotional distress upon the Plaintiff and/or should have known that emotional stress would likely occur as a result of its actions.

41. The conduct set out in this Complaint committed by the Defendant was extreme and outrageous in nature.

42. Because of the extreme and outrageous conduct and actions of the Defendant, Plaintiff has suffered emotional distress and will continue to do so.

43. The emotional distress suffered by Plaintiff at the hands of the Defendant Koch Foods is severe in nature.

WHEREFORE, the premises considered, the Plaintiff demands judgment against the Defendant for compensatory and punitive damages, with costs of Court and any such further relief that this Court shall deem appropriate.

Count 3: Simple Negligence and Wantonness Claims Against Defendants Hyundai Wia Corp., Hyundai Wia Machine America Corp., Daehyun Tech Co., Ltd. Inc., Daehyun Tech Co., Ltd., Inc. d/b/a IDH Co., Ltd, and IDH Co. Ltd., R&G Industrial Services, Inc., and Jim Parker Building Co., Ltd.

72. By this reference, the Plaintiff incorporates each and every allegation and averment set forth above as if they were fully set forth herein.

73. Defendants Hyundai Wia, Hyundai Wia America, Daehyun Tech, Daehyun Tech d/b/a/ IDH, IDH, R&G, Jim Parker, and Fictitious Defendants 1-28 are in the business of designing, testing, manufacturing, assembling, importing, marketing, distributing, and/or selling for profit a slitter system known as the slitter machine made the basis of this lawsuit.

74. Defendants Hyundai Wia, Hyundai Wia America, Daehyun Tech, Daehyun Tech d/b/a/ IDH, IDH, R&G, Jim Parker, and Fictitious Defendants 1-28 placed the slitter machine in the stream of commerce and it was sold to the Plaintiff's employer, Hysco, located in the United States in Butler County, Alabama.

75. Defendants Hyundai Wia, Hyundai Wia America, Daehyun Tech, Daehyun Tech, d/b/a/ IDH, IDH, R&G, Jim Parker and Fictitious Defendants 1-28 had a duty

JURY VERDICTS

- **\$779,477 in Mobile County – Mechanic Burned by Faulty Steam Pressure Washer**
- **\$1.9 million dollar verdict in Montgomery County – Maintenance worker who lost four fingers**
- **\$5 million dollar verdict in Escambia County – sheet metal worker who suffered hand amputation**

MARCH 11, 2019

\$1.3 Million Settlement for Worker's Injury Caused by Inadequate Guard on Mold Press Machine

by **Robert Kreisman**

Liability Under Section (c)(2)

What has been held to constitute a “Safety Device?”

- Failure to Install Better Ventilation System?
- Failure to Provide Better PPE?
- Fire Extinguishers?
- A tool rest on a metal grinding machine?
- Welded On Safety Guard?
- Extendable line curtains?

Liability Under Section (c)(2)

Recent Alabama Supreme Court Case – *Saarinen v. Hall* (2017 Case)

Supervisor's failure to install another, allegedly safer, saw that was on the premises but not yet put into operation did not equate to the removal of a safety guard under statutory provision.

Liability Under Section (c)(2)

Most Recent Alabama Supreme Court Case – *Means v. Glover*
(2021 Case)

The mere knowledge that a MSDS for sodium hydroxide existed by a safety manager and safety engineer did not establish that they were “substantially certain” that serious injury would result if the materials were mixed together

Key Points and Takeaways:

- **Prompt Investigation**
- **Identify Who Can / Might Be Sued**
- **Notify Attorney / Privileged Work Product**
- **Indemnification Letters with Third-Parties**

Key Points and Takeaways:

- **Keep Good Maintenance Records**
- **Keep Installation Instructions/Purchase Invoice Records**
- **Know that FROI, All Incident Reports Will Likely Have to Be Produced in Discovery**

Key Points and Takeaways:

- **Keep Installation Manuals**
- **Consider Consulting Manufacturer on Installing Machine Guarding**

OSHA – Machine Guarding

Resources to Keep on File:

<https://www.osha.gov/machine-guarding/hazards>

OSHA Safety and Health Information Bulletins

<https://www.osha.gov/sites/default/files/publications/shib-11-08-2021.pdf>



COVID Liability Updates

Vaccines

September 9, 2021 Executive Mandate

Applies to: (1) workers employed by the federal government; (2) federal contractors; and (3) companies with 100 or more employees (company-wide, not just a specific location), or who work in certain industries such as healthcare and education

What does it require? All employers with 100 or more employees will be required to ensure their employees are (1) fully vaccinated or (2) submit to weekly testing and wear a face covering while at work

Covered employers must also provide paid time off to employees for the time it takes them to get vaccinated and/or to recover from any side effects of the vaccination

If an employer implements and enforces a mandatory vaccination policy, the only exceptions include: (1) a qualifying disability under the ADA that prevents the employee from receiving a vaccine; (2) a doctor recommendation that the vaccine be delayed due to a medical reasons; or (3) a sincerely held religious belief.

Vaccines

September 9, 2021 Executive Mandate

Covered employers must also:

- Determine the vaccination status of each employee and keep proof of vaccination for vaccinated employees
- Provide paid leave for employees to receive each dose of the vaccination and paid sick time to recover from any side effects (OSHA's presumption is 2 days of paid sick leave per vaccine dose)
- Employers must report work-related COVID-19 in-patient hospitalizations within 24 hours of the employer learning about the in-patient hospitalization and employee work-related COVID-19 fatalities within 8 hours of the employer learning about the fatality
- Notably, a conflicting state or local law does not excuse compliance

ALABAMA SB-9

Alabama SB-9

What does this law do?

- An employer who denies an employee's exemption request "may not terminate the employee on the basis of failing to receive a vaccination for a period of 7 calendar days after the denial . . . Or, if an appeal is made, until the administrative law judge or the court issues a final ruling in the employer's favor." The employer must also compensate the employee during that time.
- Notably, the law does not restrict an employer's ability to terminate an employee for reasons other than the employee's vaccination status

Alabama SB-9

The Alabama Department of Labor has set up guidelines and an extensive interactive webpage related to filing employee exemptions:

- If an employer denies an employee's request for exemption, the employer must direct the employee to the ALDOL's exemption website in order for the employee to submit his/her request for administrative review:
- https://vaxexemption.alabama.gov/VME_Upload.aspx

What Does This Mean?

There are already many legal challenges to the vaccine mandates pending across the country. These challenges may stop or delay the implementation and enforcement of vaccination or testing mandates.

For example, two federal courts have already issued preliminary injunctions, or halts of, the vaccine requirements for health care facilities in Louisiana and Missouri.

Challenges In Alabama

United Launch Alliance employees sued to stop ULA from enforcing the federal vaccine mandate after the employees were placed on unpaid administrative leave. A federal judge denied their request for a preliminary injunction. This case is still pending.

The background of the slide features a low-angle photograph of two modern skyscrapers reaching towards a pale, overcast sky. The buildings are dark, with their grid-like window patterns clearly visible. A large, solid red square is positioned in the center of the frame, partially obscuring the buildings. Several semi-transparent, light-colored circles of varying sizes are scattered across the image, some overlapping the buildings and the red square.

Questions???
