

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

RICHARD and VICKY NOVELLO,)	
husband and wife,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. N11C-10-213 MMJ
)	
FLUID HANDLING, LLC and XYLEM,)	
INC.,)	
)	
Defendants.)	

Submitted: July 14, 2014
Decided: September 9, 2014

Upon Defendants' Motion for Summary Judgment
GRANTED

OPINION

Gary S. Nitsche, Esquire, Michael B. Galbraith, Esquire (argued), Weik, Nitsche, Dougherty & Galbraith, Attorneys for Plaintiffs

Joel H. Fredricks, Esquire, David M. Fabian, Esquire (argued), Casarino Chirstman Shalk Ransom & Doss, Attorneys for Defendants

JOHNSTON, J.

PROCEDURAL AND FACTUAL HISTORY

Plaintiff Richard Novello was injured on October 26, 2009, while working as a maintenance mechanic for DelStar Technologies, Inc. (“DelStar”). While Novello was attempting to change out an embossing roll on Delnet Line 1, a pump exploded. Novello was injured by debris from the explosion.

Defendant Fluid Handling, LLC is a wholly-owned subsidiary of Xylem, Inc. (collectively “Defendants”). Fluid Handling’s predecessor, ITT Corporation, sold an A-C Series 2000 end-suction centrifugal pump (“A-C Pump”) and shipped the A-C Pump to Processflo, Inc. Processflo, which is not a party to this litigation, incorporated the A-C Pump into the Processflo Pump Assembly and sold it to DelStar. The A-C Pump was a component part of the Processflo Pump Assembly. DelStar installed the Processflo Pump Assembly into Delnet Line 1 at the Middletown, Delaware facility.

DelStar manufactures a proprietary plastic product. The relevant part of Delnet Line 1 is where a plastic sheet comes into contact with an embossing roll. The Processflo Pump Assembly pumped water in a closed loop through the embossing roll to cool it.

DelStar had a written lock-out, tag-out (“LOTO”) procedure.¹ The purpose of the LOTO procedure is “to ensure that before any employee performs any

¹ Ex. 11 Lockout/Tagout Program.

servicing or maintenance on any machinery or equipment, where the unexpected energizing, start up or release of any type of energy could occur and cause injury, [the employee] shall render the machinery or equipment safe to work on by being locked out or tagged out.”² The DelStar policy defines a Lockout/Tagout as “a method of isolating machines or equipment from energy sources.”³

Novello testified at deposition that prior to his accident:

- He knew DelStar had a written lock-out, tag-out (“LOTO”) procedure.⁴
- He knew how to LOTO the Processflo Pump Assembly, he was issued a lock and hasp, and had these items in his possession on the date of the accident.⁵
- He knew that it was dangerous to shut the supply or suction and discharge valves of the pump with the motor running.⁶
- He knew that operating the subject pump with the supply and discharge valves shut was a dangerous condition.⁷

² *Id.*

³ *Id.*

⁴ Ex. 12 (“Novello I Tr.”) at 43:18 to 44:18.

⁵ Novello I Tr. 35:20-38:12.

⁶ *Id.* at 66:21-67:1.

⁷ *Id.* at 67:6-67:13.

- He knew that there was no pressure relief valve in the embossing roll cooling loop for Delnet Line 1.⁸

Novello testified at deposition that a year or two before his accident he cleaned up an embossing or casting roll pump after it exploded.⁹ All of the valves on the exploded pump were closed.¹⁰ Novello assumed that the explosion was a result of the pump running with the valves shut and becoming overpressurized.¹¹ After cleaning up the explosion, Novello expressed safety concerns to his coworkers.¹² Novello was concerned that there was no pressure relief valve installed on the piping leading to the embossing or casting roll pumps.¹³ He was concerned because he could find himself “in a situation where the supply and discharge valves were shut, the pump was running, and there would be no way for the pressure to vent.”¹⁴

The investigation of this accident revealed that the disconnect switch for the Processflo Pump Assembly was in the ON position and not locked out.¹⁵ The

⁸ Ex. 13 (“Novello II Tr.”) 129:20-24.

⁹ *Id.* at 135:9-140:22.

¹⁰ *Id.* at 139:24-140:2.

¹¹ *Id.* at 140:19-140:22.

¹² *Id.* at 141:21-142:21.

¹³ *Id.* at 142:5-21.

¹⁴ *Id.* at 142:11-21.

¹⁵ Ex. 1 (“Biddle Tr.”) 185:15-187:20.

discharge and return valves were found closed.¹⁶ Novello testified that on the day of his accident, he did not perform a LOTO and lock out the disconnect switch.¹⁷ Novello also testified that the accident would not have occurred if the lock out procedure had been performed.¹⁸ DelStar determined that the primary cause of the accident was “[l]ack of application of LOTO.”¹⁹

Plaintiffs’ expert concluded that a warning was needed to alert DelStar that a device should be installed with the pump to protect against overtemperature and/or overpressure.²⁰

Plaintiffs filed their Amended Complaint on January 9, 2010, alleging that Defendants were liable for failure to warn, defective design, and defective manufacture of the pump. Defendants filed a Motion for Summary Judgment on April 15, 2014. Plaintiffs have conceded the defective design and defective manufacture claims in their Answering Brief. The sole issue remaining is alleged failure to warn.

¹⁶ *Id.* at 79:20-24.

¹⁷ Novello II Tr. 154:21-24.

¹⁸ *Id.* at 155:20-155:24.

¹⁹ Biddle Tr. 186:9-187:21; Ex. 14 DelStar Safety Incident Report, p. 2.

²⁰ Ex. 16 Engineer’s Report of Richard Novello Injury Incident (“Engineer’s Report”), p. 16.

STANDARD OF REVIEW

Motion for Summary Judgment

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.²¹ All facts are viewed in a light most favorable to the non-moving party.²² Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.²³ When the facts permit a reasonable person to draw only one inference, the question becomes one for decision as a matter of law.²⁴ If the non-moving party bears the burden of proof at trial, yet “fails to make a showing sufficient to establish the existence of an element essential to that party’s case,” then summary judgment may be granted against that party.²⁵

The duty to warn is an issue of law.²⁶ A manufacturer or distributor has a duty to warn when it places a product in the stream of commerce, knowing that the

²¹ Super. Ct. Civ. R. 56(c).

²² *Hammond v. Colt Indus. Operating Corp.*, 565 A.2d 558, 560 (Del. Super. 1989).

²³ Super. Ct. Civ. R. 56(c).

²⁴ *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

²⁵ *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

²⁶ *See Farm Family Mut. Ins. Co. v. Purdue, Inc.*, 1992 WL 21141, at *3 (Del.); *Wilhelm v. Globe Solvent Co.*, 373 A.2d 218, 223 (Del. Super. 1977); *Steffen v. Colt Indus. Operating Corp.*, 1987 WL 8689, at *4 (Del. Super.).

product involves dangers to users.²⁷ Delaware courts have established that a manufacturer or distributor has no duty “to warn of the product’s dangerous propensity if the user is aware of that dangerous propensity.”²⁸

ANALYSIS

It is well settled under Delaware law that a manufacturer or distributor’s duty to warn “extends only to those who can reasonably be assumed are ignorant of the danger.”²⁹

Novello unequivocally stated that he had actual knowledge of the risks associated with a pump becoming overpressurized. Novello understood that a pump running with the valves shut would have no where for the pressure to vent, therefore becoming overpressurized. Prior to his accident, Novello knew that the pump he was working on, DelNet Line 1, did not have a pressure relief valve. Novello knew how to LOTO the Processflo Pump assembly,³⁰ however, he did not perform a LOTO or lock out the disconnect switch on the day of the accident.³¹

Defendants’ predecessor sold the A-C Pump, a component part of the Processflo Pump Assembly. Processflo incorporated the A-C Pump into the

²⁷ *Farm Family*, 1992 WL 21141, at *3; *Steffen*, 1987 WL 8689, at *4.

²⁸ *Farm Family*, 1992 WL 21141, at *3; *see Wilhelm*, 373 A.2d at 223.

²⁹ *Farm Family*, 1992 WL 21141, at *2.

³⁰ Novello I Tr. 35:20-38:12.

³¹ Novello II Tr. 154:21-24.

Processflo Pump Assembly and sold it to DelStar. Defendants did not manufacture, design, or install the Processflo Pump Assembly. Defendants did not know how the A-C Pump was going to be used or installed and had no knowledge of what was done to the A-C Pump after it was shipped to Processflo.³²

Plaintiffs' expert concludes that manufacturers and distributors have a responsibility to protect people from the dangers in their products.³³ The expert recommends that "manufacturers should assure hazards are engineered out of the product during the design process."³⁴ The expert finds that the hazard in this case, ensuring flow through the pump during blocked flow conditions, could not have been designed out.³⁵ The expert concludes that Defendants' failure to warn DelStar of the explosion hazard that existed in the pump was a defect that was a cause of Novello's injury.³⁶ Also, Defendants' failure to warn DelStar that a device should be installed to protect against overtemperature and/or overpressure was a defect that was a cause of Novello's injury.³⁷

As a practical matter, the duty is more properly imposed on those designing, manufacturing, or installing the Processflo Pump Assembly. The undisputed

³² Ex. 4, pp. 5, 7.

³³ Engineer's Report, p. 10.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 16.

³⁷ *Id.*

evidence demonstrates that Defendants had no way of knowing how the A-C Pump would be used, or whether a pressure relief valve would be necessary.

When Defendants shipped the A-C Pump to Processflo, a warning label was included, stating: “WARNING . . . DISCONNECT AND LOCK OUT POWER BEFORE SERVICING . . . FAILURE TO FOLLOW THESE INSTRUCTIONS COULD RESULT IN SERIOUS PERSONAL INJURY OR EVEN DEATH.”³⁸

Another warning label was included, stating: “WARNING . . . DO NOT OPERATE AT OR NEAR ZERO FLOW (CLOSED SHUTOFF VALVE) EXPLOSION COULD RESULT.”³⁹

The Court finds that the proximate cause of the accident causing Novello’s injuries was his failure to perform the LOTO procedure. Plaintiffs argue that the issue of proximate cause depends on a material issue of disputed fact as to whether Plaintiff was required to LOTO the pump during roll changes. However, as conceded in Novello’s deposition testimony,⁴⁰ it is undisputed that the accident would not have occurred if Novello had performed the LOTO procedure. Novello was aware of the hazards of failure to follow the LOTO procedure. There is no evidence or reasonable inference that any additional warning would have prevented his injuries.

³⁸ Ex. 5.

³⁹ Ex. 6.

⁴⁰ Novello II Tr. 155:20-155-24.

CONCLUSION

The Court finds that Defendants did not have a duty to warn because Novello was admittedly aware of the dangerous propensity at issue. Novello had received training on the LOTO procedure and had performed the LOTO procedure many times. Novello was aware that the DelNet Line 1 did not have a relief valve and could become dangerous if overpressurized. Novello testified that if he had performed the LOTO procedure, the injury causing accident would not have happened.

THEREFORE, Defendants' Motion for Summary Judgment is hereby **GRANTED.**

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston