

\$3.25 million settlement for catastrophic injury caused by management indifference

Bill Johnson (not his real name) had completed his military service with the U. S. Army and received an honorable discharge. After years of training and a deployment to Afghanistan as an industrial equipment technician, he was ready to start a new career. Bill, his wife, and their two children moved to Florida where he quickly found a job as an equipment technician with Metal Press Company (not its real name). Metal Press fabricated metal lids for shipping containers used to store perishable food during transportation. The fabricating process utilized powerful industrial pneumatic presses to stamp the metal lids used on the large containers.

What was to be an exciting new adventure for the Johnson family – new job, new location – suddenly turned into a nightmare. Bill and a co-worker were following the proper protocols in operating the press



and performing a maintenance task to remove an internal component in the press. The press was supposed to be secured in the single-stroke open position in order to remove the internal component. However, a safety bypass switch had been retrofitted allowing the press to default into continuous-stroke mode. When Bill placed his hands inside the press to remove the component part, the press unexpectedly repeated the cycle stroke and closed on his hands before he could remove them from the equipment. The press amputated eight of his fingers, cutting across the palms of his hands.

Following the incident, the Occupational Safety and Health Administration (OSHA) began an investigation. It discovered many troubling facts that had led to Bill's injury. The aging press equipment, dating back to the 1940s, was *(Continued on page four.)*

Speeding SUV runs red light causing collision resulting in \$1.25 million settlement

John and Jane Doe (not their real names) were driving westbound on a highway in Collier County, Florida, when they came to a stop at a red light waiting to make a left turn. When the traffic light's left-turn arrow turned green, John proceeded into the intersection to make his turn. Suddenly, the driver of an SUV heading north ran through his red light and slammed into their car. The collision was so violent it resulted in the total loss of the Doe's vehicle. John lost consciousness at the impact. He suffered a severe leg fracture which required multiple surgeries. Jane had soft tissue injuries. She suffered through a great deal of mental anguish and trauma as she sat in the car next to her totally unresponsive husband waiting for emergency medical help. The EMS crew arrived shortly and were able to save John's life.

Following the crash and while trying to recover from his injuries, John and Jane turned to SDSBS attorneys **Chris Searcy** and **Brian Denney** for help. In a pre-suit investigation conducted by Mr. Denney and paralegal Nick DeBellis, they downloaded the SUV driver's event data recorder which revealed that the driver had been exceeding the speed limit just prior to the collision. At mediation before filing a lawsuit, SDSBS was able to reach a settlement in the amount of \$1,250,000 for John and Jane Doe.

Mr. Denney, Mr. DeBellis, and the rest of their professional team work on a wide variety of cases for their clients. In the past two years, their efforts have resulted in recoveries exceeding \$86 million. ♦

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**SEARCY
DENNEY
SCAROLA
BARNHART
& SHIPLEY PA**
ATTORNEYS AT LAW

\$3.25 million settlement for hand injury caused by dangerous industrial pneumatic press

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in poor condition with retrofitted parts, bypassed electrical systems, modified safety switches, and non-existent safety protocols. These dangerous modifications, coupled with a lack of safety protocols, violated OSHA regulations and caused Bill's catastrophic injuries.

Because Bill was an employee of Metal Press and because his injury had occurred on the job, he was advised by his employer that his only recourse for the horrifying, debilitating, and life-altering injuries was to bring a workers compensation insurance claim. However, Bill and his family were concerned that the benefits provided in a workers compensation claim would be insufficient based on his devastating injury. And, if he elected to bring a claim under the workers compensation system, those responsible for causing his injury would never be held accountable.

Unsure of his legal options and devastated by his injuries and the medical prognosis, Bill asked SDSBS attorneys **Cameron Kennedy** and **Carter Scott** to represent him. The attorneys initiated a comprehensive investigation of the facts surrounding the incident to determine if a legal claim could be filed based on the exception to the immunity provisions under Florida's workers compensation statute, Section 440.11, and within a draconian amendment passed by the state legislature in 2003 which raised the burden for the exception to what is colloquially called the "virtually certain" standard.

The attorneys' investigation revealed that Metal Press was the manufacturing facility that had employed Bill and other workers. However, Metal Press was not just a small manufacturing company. In fact, Metal Press was part of a web of intertwined companies that formed a large conglomerate. Mr. Kennedy and Mr. Scott filed suit against all of the companies they could identify. Documents obtained through discovery then revealed a series of complex operating and ownership agreements that were part of the web of companies. At the top of the web was XYZ Holdings (not its real name). XYZ Holdings actually owned Metal Press's manufacturing facility

and equipment, including the powerful pneumatic presses. Also owned by XYZ Holdings was a separate company, ABC Operating (not its real name), which managed the operations of Metal Press. Under a complex operating agreement, Metal Press was required to pay a substantial fee to ABC Operating so that Metal Press could maintain operational possession of the equipment and facility. Under the agreement with ABC Operating, profits derived from the fees paid by Metal Press were funneled up to XYZ Holdings. Critically important to determining ownership interest in the assets, XYZ Holdings exerted its right of dominion and control over its assets, and XYZ Holdings dictated how the aging and failing pneumatic presses were repaired and modified. In doing so, and in an effort to maximize profits, XYZ Holdings had cut corners on maintaining, repairing, and modifying equipment. As a result, the presses and other equipment were rendered unsafe.

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When the facts were lined up, the purpose of this complicated and interwoven web of companies and hidden operating and ownership agreements was quite simple: to maximize earnings and huge tax benefits for XYZ Holdings and to limit its legal liability and financial costs associated with employees, payroll, health insurance, and workers compensation insurance. Mr. Kennedy and Mr. Scott eventually established substantial evidence of XYZ Holdings's negligent conduct in the operation and maintenance of the presses. Because of this negligence, XYZ Holdings could not avail itself of the limitation on liability extended by the workers compensation statute. Once this evidence became clear, the parties reached a settlement of \$3.25 million. The settlement will provide the Johnson family with much needed financial security as they face a lifetime of challenges caused by Bill's life-altering injury and disability. *(Continued on next page)*

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